The Chartered Institute of Taxation

Advanced Technical

Domestic Indirect Taxation

May 2025

Suggested answers

Answer 1

Capital Goods Scheme

The refurbishment of a building can be a Capital Goods Scheme (CGS) asset where the value of capital expenditure on a project is over £250,000 plus VAT. Given the timeframe in which the work was completed, and that there does not appear to be phases to the project, this would be considered a single project for CGS purposes.

As the painting and decorating has not been capitalised, it will not form part of the CGS as per HMRC's guidance.

Input Tax Recovery – Standard Method Override

In the 24/25 partial exemption year, using the prior year annual adjustment percentage OfficeRite will have recovered 100% of VAT on its costs, including the CGS asset. However, given the property has been partly used for exempt activities, it will be necessary to consider the use of the input tax and whether recovery based on use varies significantly (over £50,000) from recovery obtained under the standard method and hence whether the Standard Method Override (SMO) applies. (SI 1995/2518, Reg 107A).

In respect of works undertaken on property, an alternative proxy for use such as floorspace, or turnover solely from the property, is more appropriate. The new glazing, improvements to the roof and decorating benefitted the property as a whole and so one third of these costs relates to the ground floor used for exempt purposes. The top floor however is used solely for taxable activities so the work relating to the new meeting rooms would be recoverable in full under a use method.

Using property turnover, one eighth of the glazing, roof, and decorating costs would relate to the exempt element of the property. This would not be an appropriate method given the rent to Together2 is below commercial rates and therefore would not accurately reflect the use of the refurbishment inputs. Therefore it would be appropriate to use floorspace as follows:

Works	VAT incurred and recovered	Recovery rate based on floorspace	VAT recoverable based on use
Glazing	£60,000	66%	£40,000
Roof	£90,000	66%	£60,000
Meeting Rooms	£30,000	100%	£30,000
Decorating	£6,000	66%	£4,000
Total	£186,000		£134,000

As the difference is over £50,000 an adjustment would be required under the SMO to repay £52,000 to HMRC and would need to be included on the VAT return period ending 30 June 25.

This would also act as the calculation for the baseline recovery rate under the CGS in interval 1. The recovery on the CGS elements (excluding the decorating) is £130,000 out of a total of £180,000 input tax incurred. Therefore, the baseline under the CGS would be 130,000/180,000, or 73%.

Transfer of Property

The transfer of a property within a VAT group would not trigger an interval for CGS purposes and the VAT group would continue making capital goods scheme adjustments.

Where consideration for the property is deferred, typically the payment of the deferred amount would trigger a tax point where an alternative tax point has not already been crystalised. Within a VAT group there is no formal tax point for VAT purposes. However, the case of *The Prudential Insurance Company Ltd* [2024] EWCA 300 found that the normal time of supply rules do determine when a 'tax point' would otherwise have been created. Therefore if the property physically transfers intra-VAT group, there would be no VAT due even though payment takes place after OfficeRite leaves the VAT group.

If the legal transfer is deferred, and there has been no payment intra-VAT group, then no tax point will have been crystalised and the deferred consideration would constitute a tax point. It currently appears that the beneficial title will not have passed and no tax point triggered as SmallStudy is not entitled to any rental income in the interim and would not therefore appear to hold beneficial interest until legal title passes.

This would also not qualify as a TOGC. HMRC look-through a VAT group for the purposes of determining a TOGC and therefore OfficeRite would have been seen as a property rental company, whilst SmallStudy is occupying the property mainly for its own purposes. The small amount of rental from the charity would be insufficient to change this conclusion.

Consequently, the transfer takes place outside of a VAT group, and is exempt from VAT given OfficeRite has not opted to tax.

Capital Goods Scheme Adjustment on Sale

An exempt property sale would mean all future CGS intervals would be for exempt purposes and would therefore have 0% taxable use. An adjustment would be required for the 9 remaining intervals, so OfficeRite would be required to repay some of the input tax recovered previously, being (£180,000/10 * 73% * 9 intervals) £118,260 at the time of sale. However should an option to tax be made, the remaining intervals would be deemed to be used for 100% taxable activity and OfficeRite would be entitled to additional recovery of (£180,000/10 * 27% * 9 intervals) £43,740. OfficeRite would make a single adjustment for all remaining periods when the property is sold.

An option to tax would mean that OfficeRite would need to account for output tax on the property sale of £300,000. Recovery by SmallStudy would be based on the standard method and so would be 100% recovery at the time this is incurred. However, SmallStudy would also need to consider the SMO. Using the same use calculation would result in a restriction of £100,000, being one third of the input tax incurred and being over the threshold for adjustment under the SMO.

Commercially this results in a preferable outcome to an exempt sale (£100,000 vs £118,260 cost) but still represents a cost to the VAT group.

OfficeRite should alternatively consider whether it can transfer beneficial ownership to SmallStudy on 31 May 2025, pending the consent. This may be achieved by ensuring SmallStudy has the rights to income from Together2, as well as documented evidence in the contract that beneficial interest has passed. This would crystalise a basic tax point and ensure the transfer took place intra-VAT group.

Marking Guide

Topic	Marks
CGS – consideration of whether or not this is a single project;	0.5
CGS – considering whether or not to include the value of painting and decorating (HMRC reference to accounting treatment)	1
OfficeRite will have recovered all VAT on these costs to date based on prior year recovery	0.5
Adjustment for SMO purposes – determine appropriate calculation (turnover vs floorspace for example).	1
Determine whether an adjustment is required – allocation of costs to whole property vs directly attributable to specific floors when looking at a fair 'use' method.	2
Calculate adjustment for SMO and when this would be accounted for	1
Determine baseline percentage for CGS purposes and different cost basis to SMO	1
Intra-VAT group transfer would mean that VAT group will need to continue to monitor use and make CGS adjustments going forwards.	0.5
Deferred transfer – consideration of triggering a 'tax point' while in a VAT group – i.e. normal tax point rules apply as per Prudential case.	2
If consideration not paid, no VAT invoice, then deferred transfer will also defer the tax point.	1
Consider beneficial interest – conclude this hasn't passed based on current plans and so no tax point triggered.	1
This will make property sale take place post-share sale and no longer intra-VAT group.	0.5
No VAT as no Option to Tax.	0.5
No TOGC as SmallStudy will be occupying primarily for its own purposes - HMRC 'look through' VAT group in context of a TOGC	1.5
Impact on CGS – remaining intervals all treated as exempt use by OfficeRite and so will need to make an adjustment for previously recovered input tax.	1
Calculate adjustment and amount repayable if no option to tax	1
Calculate additional recovery if an option to tax is made	1
Calculate impact of option to tax	1
Consider whether beneficial interest can be transferred, and conclude on best approach	2
Total	**20**

Answer 2

Completed Contracts

The sale of the contracts to BrokerBank appears to be debt factoring. This is standard rated as it is specifically excluded from group 5, Schedule 9, VATA 1994. Where however the purchaser buys discounted debts at his own risk, it is not seen as a service for consideration (*GKFL Financial Services* C-93/10 refers). The difference between the face value and the price paid is not consideration for any service by BrokerBank.

DriveDifferent (DD) would not be able to claim bad debt relief (BDR) on its outstanding debts where these have been sold. However, Regulation 171(5), SI 1995/2518 states that if bad debt relief has already been claimed by DD, the sale of the debt does not constitute payment and this does not trigger a requirement to repay the output tax. Similarly, if BrokerBank is able to collect any cash from debtors, this does not constitute payment towards DD and would also not trigger a bad debt repayment to HMRC. It is therefore in DD's interest to ensure it has maximised its bad debt relief.

DD would need to consider whether there has been a tax point and a requirement to account for output tax. As no invoice has been raised, a tax point could only have been triggered by a payment, or performance of the service to the extent that this does not constitute a continuous supply.

A continuous supply is one where the consideration is determined or payable periodically. At the time the contracts are entered into by DD, it is not clear how long these will run, and hence when the service will be performed. Although it becomes clear when the cars are returned, it should not be possible to re-characterise the nature of the supply at this time and hence the services would be seen as continuous in nature, with a tax point only triggered by payment or invoice.

For bad debt purposes, it is necessary to consider when the six-month timeline begins. This could be either upon raising an invoice, or return of the cars as this is when the payment becomes due. Given that the contracts are clear as to the due date for payment, there is a good argument that the bad debt timeline begins when payment falls due, even where an invoice has not been raised. Therefore provided the other requirements for bad debt relief have been met, bad debt relief should be claimed where the payment has been outstanding for six months.

Given these are continuous supplies, DD would account for VAT when an invoice has been raised if no payment has been received. Therefore bad debt adjustments would be as follows:

Contracts Expiring	Bad Debt Relief Claimed	Additional Bad Debt Relief	Comment
More than 12 months ago	£24,000	£0	All available bad debt relief has been claimed.
9 – 12 months ago	£30,000	£42,000	Invoices will have been raised and so output tax accounted for, and the payments have been outstanding for over 6 months. Therefore bad debt relief can be claimed on the full balance.
6 – 9 months ago	£0	(£10,000)	No invoices have been raised, so no tax point has been crystallised and so the bad debt conditions have not been met. DD needs to repay the bad debt claim to HMRC.
Less than 6 months ago	£0	£0	Six months has not passed
Total		£32,000	

Ongoing Contracts

Ongoing contracts will also be continuous supplies of services given the unknown contract length. No tax point will therefore have been crystalised.

The sale of ongoing contracts with the benefit of future income is block discounting and this is an exempt financial transaction. The sale of the underlying assets themselves are not part of the exempt transaction and hence subject to VAT given these are commercial vehicles.

Where title to the vans does not pass along with the contract, DD will remain responsible for accounting for the output tax when the relevant tax point is crystalised.

Should the purchaser raise invoices for all ongoing contracts, this will trigger a tax point and hence a requirement to account for output tax on all ongoing contracts.

Given no cash will have been received for these to date, DD should ensure in commercial negotiations that it will receive sufficient funds, and appropriate and timely information, to allow it to account for the full output tax on the invoice where it retains this obligation.

Where title to the vans does pass, so does the obligation to account for output tax.

Marking Guide

Topic	**Marks**
Completed contracts:	
Debt factoring is not exempt from VAT.	0.5
However GKFL case confirmed that the purchase of debts at a discount does not constitute consideration for a supply.	1.5
No bad debt relief can be claimed by DriveDifferent where it sells the debt.	0.5
But if bad debt relief has already been claimed then this does not constitute payment of the underlying supply and hence no requirement to repay the bad debt adjustment (reg 171 (5))	2
Consider whether a performance/basic tax point has been crystalised	1.5
Debate when 6-month timeline for bad debt begins - on return of cars or raising of invoice	1
Calculate amount of bad debt relief adjustment/still to claim pre-sale	2
Ongoing contracts	
Tax point – continuous supply of services if contract length unknown.	0.5
Tax point only triggered by invoice or payment. Therefore no tax point for contracts where no invoices.	0.5
This is seen as block discounting – sale of the debt is exempt as finance transaction.	1
Sale of the underlying assets are subject to VAT at the appropriate rate – consider rate applicable to vans	1
Where title to the cars isn't passing the obligation to account for output tax will remain with DriveDifferent	1
Where title to the cars does pass, the obligation to account for output tax on the leases will also transfer to the new owner.	1
Commercial considerations regarding passing of information to allow DriveDifferent to account for VAT	1
Total	**15**

Answer 3

New Referral Bonus

The *Simple Energy Limited* [2023] TC08995 case found that the provision of a referral bonus to an existing customer constituted non-monetary consideration in the form of a 'service' provided by the existing customer of generating a new customer, in return for a supply of energy. Consequently the credit received by the customer on their account meant that VAT became due on the full amount of any future supply, including that against which the credit was used.

WhyteGood would be in a similar position, and the existing customer has made a supply to WhyteGood. For the purposes of valuing the non-monetary consideration, it is necessary to look at this from the perspective of WhyteGood. This has been valued at £20 being the credit applied to their account. WhyteGood will therefore need to account for VAT on the full price of the goods against which this credit is used in the future, including this £20 credit.

However, the same is not true for the new customer. *Mirror Group plc* C-409/98 [2002] BVC found that a tenant being paid an inducement to sign a lease did not make a supply where it simply agrees to a tenancy agreement. This was reiterated in the *Simple Energy Limited* judgement.

On this basis the new customer is not providing a service back to WhyteGood and hence is not providing any non-monetary consideration towards future purchases. This is on the basis that 'agreeing to sign up' is deemed to fall short of a supply.

Therefore, when a new customer uses their discount, WhyteGood will account for VAT based on the discounted price paid and will not need to account for VAT on the value of any 'non-monetary consideration'.

Extended Warranty

VAT

WhyteGood's input tax recovery will depend on who receives the supply. Whilst the customer receives some direct benefit from the maintenance work carried out, WhyteGood is the contracting party and receives the benefit of meeting its obligations under the maintenance programmes.

The case of *Redrow Group plc* [1999] BVC 96 considered input tax recovery where there are multiple beneficiaries. *Redrow Group plc* was entitled to VAT recovery on the basis that it selected and instructed the supplier and used the costs for its taxable business. The same is true for WhyteGood as it controls the supplier providing the services, and what work can be carried out. Therefore whilst the customer receives a benefit, WhyteGood can recover input tax on Electpair's invoices.

Insurance Premium Tax (IPT)

Extended warranties are typically contracts of insurance for IPT purposes as they contain the hallmarks of insurance, namely that a premium is paid in respect of coverage against a future UK risk.

WhyteGood's warranties would be potentially subject to a higher rate of IPT as they are domestic appliances and the provider of the insurance (Protexxion) pays part of the premium to the supplier of the domestic appliance (WhyteGood) (para 3, Sch6A, FA 1994). Therefore, where such warranties are deemed to be paid for by the customer, the arrangement with WhyteGood and Protexxion would be seen as domestic appliance insurance, because WhyteGood receives a fraction of the premium paid to the insurer.

However, as stated above, to fall within IPT, the contract also needs to be paid for, as free of charge contracts are outside the scope of IPT. IPT is due on the "premium", defined in s72, FA 1994 as any payment received by the insurer under the contract, including the open market value of any non-monetary consideration received (para 3 (4), Sch6A, FA 1994).. Here, as no other consideration is paid by the loyalty scheme customers, these extended warranties are freely given and so fall outside the scope of IPT.

In respect of the maintenance programme, this could fall within the scope of IPT if this is an insurance product. Typically an ongoing contract for repair is seen as a contract for services, rather than insurance. It allows the customer to a defined set of services (for example maintenance) regardless of whether there is a fault. This is different to an extended warranty which in some instances may not give rise to any services if the product has no faults. Therefore, this is not an insurance product and is instead an agreement by both parties to pay for a defined set of services. As such the repair contract will fall outside of IPT, but would be subject to VAT at the standard rate.

Marking Guide

Topic	**Marks**
VAT	
Simple Energy Limited case – consider the various aspects including:	
Non-monetary consideration in the hands of the referrer as they have provided a service to the supplier	1
This has been valued at the amount credited on the account	1
Requirement for WhyteGood to account for VAT on the full price at the time this credit is used	1
Agreeing to sign up falls short of a supply, reference to Mirror Group or other case law	1
Therefore no non-monetary consideration provided by the new customer	0.5
WhyteGood accounts for VAT on discounted price	0.5
Maintenance programme subject to VAT as not subject to IPT	0.5
Consider input tax on invoices from Electpair, including reference to Redrow or other relevant case law.	1.5
IPT	
Extended warranties are typically insurance contracts for IPT purposes	0.5
White goods would be captured by the higher rate	0.5
Where paid for, this would be seen as domestic appliance insurance as the insurer pays an element of the premium back to WhyteGood.	2
To be captured by domestic appliance insurance it must not be free of charge.	1
Consider what is included in the premium –and hence no IPT on the free extended warranties.	1.5
Repair contracts – need to determine whether this is an insurance product.	1.5
Conclude this is not the same as an extended warranty and hence not subject to IPT	1
Total	**15**

Answer 4

Product 1 – high protein flapjacks

HMRC's general position is that traditional flapjacks are zero-rated as they are treated as a cake. However, where the flapjack is similar to a cereal bar, it is treated as confectionary and standard-rated. Consequently, consideration must be given to factors such as the ingredients of the product, the manufacturing process, appearance, texture and marketing.

Looking at the ingredients of this product along with its labelling and manufacture process (simple pressing and no baking), this product appears more similar to a cereal bar than a traditional flapjack. There are not enough characteristics for this to be treated as a cake and standard rate VAT should be charged. This position is supported by *Glanbia Milk Ltd v HMRC [2022] UKFTT 00108 (TC)* which concerned different types of high protein flapjacks. They were made from similar ingredients of oats, protein and syrup and were marketed as a sports nutrition product, which distinguished them from traditional cakes, The FTT concluded that they should be treated as standard-rated confectionary.

Shop4Lyf has therefore underdeclared output tax of £32,825.

Product 2 – turmeric shots

Most beverages are subject to the standard-rate of VAT under excepted item 4 Group 1, Schedule 8,. The meaning of beverage is not defined in VAT law but guidance is contained within VAT notice 701/14 paragraph 3.7 and was tested in *Bioconcepts Ltd (v.11287).* A drink should be treated as a beverage if it is commonly consumed for one of the following reasons:

- Slake thirst;
- Give pleasure;
- Increase bodily liquid levels; or
- Fortify

Applying the beverage tests, and the decision *Innate-Essence Ltd v HMRC (UKFTT 371 TC)* where the tribunal decided that turmeric shots are not a beverage but rather zero-rated food, Shop4Lyf should not charge VAT on this product.

Shop4Lyf has overdeclared VAT of £60,309 (£361,854/6).

Product 3 – large marshmallows

Confectionary is standard-rated under excepted item 2, Group 1, Schedule 8, VATA 1994. The term "confectionary" means something sweet to taste not requiring further preparation before consumption and usually eaten with the fingers.

The large marshmallows Shop4Lyf sell, whilst will undoubtably be sweet to taste, are unlikely to be eaten straight from the bag given their size. The packaging of the large marshmallows indicates they're held out for sale for toasting to make s'mores. Similar products were discussed in *HMRC v Innovative Bites Ltd [2022] UKFTT 352 (TC)*, ('IB').. IB's main argument was that the large marshmallows were not confectionery as they were supposed to be cooked before being eaten. This was supported by the marketing of the marshmallows, including their placement in supermarkets. The FTT agreed with IB and the large marshmallows were subject to zero-rate of VAT.

Given the facts and supportive case, Shop4Lyf should treat these large marshmallows as zero-rated.

When a mixed supply includes both zero-rated (marshmallows) and standard-rated (skewers) items, it should be determined if there is a single or multiple supply. The marshmallows element cost £2.50. The skewers cost £0.45 making it 15% of the total cost.

The linked supplies concession applies as the skewers cost no more than £1 and 20% of the cost of all the items in the set with no separate price charged for them. Therefore, the promotional pack can be zero-rated.

Shop4Lyf has overdeclared £16,086 (£96,516/6) of output tax to HMRC.

Total error

Shop4Lyf has overdeclared output tax to HMRC of £37,005 (£60,309 + £16,086 – £32,825 and is due a refund from HMRC.

An error can be adjusted in the next VAT return where it is less than the greater of £10,000 or 1% of box 6 (up to a maximum of £50,000). As the thresholds to correct an error in the next VAT return have not been breached, the error can be corrected in the next VAT return.

Unjust enrichment

If HMRC can show that someone else, other than the claimant, bore the burden of the VAT, then they can invoke the defence of unjust enrichment to avoid repaying output tax claims. It is difficult for HMRC to argue the claimant would be unjustly enriched. This was debated in *Marks & Spencer plc v HMRC* (c-309/06) where Marks & Spencer successfully argued that it did not take VAT into account when fixing its prices as there is a market price which should not be exceeded in order to remain competitive.

As Shop4Lyf bears the VAT burden on its products to remain competitive, it should have a successful defence to argue that it would not be unjustly enriched to receive the refund due.

Marking Guide

Topic	**Marks**
Protein flapjacks	
Glanbia Milk case – application and liability of protein flapjacks	2
Calculation of underdeclared output tax	0.5
Turmeric shots	
Beverage text – Bioconcepts case and outline of tests	1.5
Innate-essence case – liability of turmeric shots	1
Calculation of overdeclared output tax	0.5
Large marshmallows	
Innovative bites case – application of confectionary rules and liability of large marshmallows	1.5
Mixed supply consideration	0.5
Cost of marshmallows and skewers calculation	1.5
Linked supplies concession	1
Calculation of overdeclared output tax	0.5
Errors	
Calculation of total error	0.5
Correction through VAT return	1
Conclusion on correcting through VAT return	0.5
Unjust enrichment	
Outlining the defence	1
Marks and Spencer case – burden of the VAT	1
Concluding Shop4Lyf should have a defence against unjust enrichment	0.5
TOTAL	**15**

Answer 5

Acquisition of shares

The sale of shares is exempt from VAT so PlanAInsurance Ltd ('PlanA') will not incur VAT on the purchase of the shares in Here2Assist. However, there will be Stamp Duty charged at a rate of 0.5% on the purchase of shares and this is payable by PlanA. The total Stamp Duty due will be £25,000 and this is required to be paid within 30 days of the effective date of the transfer, usually the date the form is signed.

VAT incurred on legal and other professional fees associated with the purchase of the shares can be recovered as input tax to the extent they are attributed to a taxable economic activity. The holding of shares is not in itself an economic activity. If the costs incurred are more than nominal, PlanA may want to put in place a management services agreement between it and Here2Assist to provide management services which would establish a taxable economic activity. HMRC will look through the VAT group to determine VAT recovery and the normal rules of partial exemption will apply.

Acquisition of business trade and assets

Transfer of a Going Concern

The TOGC conditions are well known but it is worth noting one key condition in this case. It must be the intention of the transferee to carry on the same kind of trade as the transferor. This is relevant as once acquired, the assets purchased will only be making supplies to other VAT group members.

HMRC's previous view was that where a business is sold and the purchaser is part of a VAT group and uses the newly purchased business to only make supplies to VAT group members, the business does not exist as, under s43(1)(a) VATA 1994, the intra VAT group supplies are disregarded. However, the *Intelligent Managed Services v HMRC [2015] UKUT 0341 (TCC)* case concluded the existence of a VAT group does not change the existence of an economic activity or the nature of each business within a VAT group. HMRC subsequently released R&C Brief 11(2016) stating that they would accept the position if two conditions were met:

1) The purchaser will continue to use the transferred assets to operate the same kind of business to the other VAT group members; and
2) Other VAT group members use the services to make supplies to parties outside the VAT group.

As PlanA will meet these conditions, the transfer of assets can be treated as a TOGC.

The office being purchased as part of the acquisition is a 'new' building which would otherwise be subject to the standard rate of VAT. Therefore, PlanA must make an option to tax and notify HMRC by the relevant date (usually the date of transfer). PlanA must notify that the option to tax will not be disapplied under the anti-avoidance provision in VATA 1994, Schedule 10, paragraph 12. Whilst the property is within the capital goods scheme, at the time of the grant, it is not intended for the building to be used for non-qualifying purposes as Here2Assist is fully taxable so under a sectorised partial exemption method, would be entitled to full input tax credit. To secure this position, the VAT group should apply to use a sectorised partial exemption special method.

VAT incurred on professional fees for the TOGC are treated as overheads of the VAT group and can be recovered in line with the VAT group's normal partial exemption percentage.

TOGC into Partially Exempt VAT Group

As this is a transfer of a business into a partially exempt VAT group, under s44, VATA 1994 there is a self-supply charge on certain chargeable assets meaning their supply would be taxable (but not zero-rated). The chargeable assets are treated as being made to the representative member at open market value. The self-supply does not affect the partial exemption position of the VAT group.

Certain exceptions to this self-supply charge include goodwill, chargeable assets covered by the capital goods scheme such as land and buildings and some computer equipment. If the assets were purchased more than three years ago, there will be no self-supply charge.

For PlanA, it will have a self-supply charge of £24,000 on the six servers transferring. This should be recovered as input tax in accordance with the VAT group's partial exemption method.

Capital Goods Scheme

As the new office cost more than £250,000 plus VAT, this will be a capital goods scheme asset. As each server costs less than £50,000, they do not constitute a capital goods scheme asset. £80,000 of input VAT was recovered by Here2Assist and PlanA will have an obligation to monitor and adjust the input tax for the remaining intervals. As the VAT group typically recovers 5% of residual costs, this will be a cost of around £60,800 which will need to be paid to HMRC over the remaining 8 intervals.

SDLT and SD

As there is no purchase of shares, there will be no Stamp Duty on their purchase.

However, SDLT will be payable by PlanA on the purchase of the office. As it can be treated as a TOGC, no VAT is charged on the property so SDLT will be due on £600,000:

SDLT at 0% on first £150,000 (£)	SDLT at 2% on next £100,000 (£)	SDLT at 5% on balance of £350,000 (£)	Total SDLT £
0	2,000	17,500	19,500

PlanA must deliver a land transaction return (SDLT1) to HMRC within 14 days of the effective date, usually the date of completion.

Conclusion

Due to the self-supply charge for VAT and the SDLT payable, it is better for PlanA to purchase the shares in Here2Assist.

Marking Guide

Topic	**Marks**
Acquisition of shares	
No VAT on shares	0.5
Stamp Duty calculation and compliance	1
Input tax recovery	1
Acquisition of trade and assets	
TOGC being outside the scope and no Stamp Duty cost	1
HMRC's previous policy that business ceases if join a VAT group and only supply to that VAT group, *Intelligent Managed Services Limited* case changed this - R&C Brief 11(2016)	2
Application of ruling to PlanA - TOGC applies	1
Input tax on TOGC costs – residual for the VAT group	1
Self-supply charge as transfer into partly exempt VAT group including exclusions CGS and goodwill.	2.5
The self-supply is not considered when determining the PE percentage	1
Calculation of self-supply charge, computers only as land falls outside as CGS item	2
Input tax restriction of self-supply charge	1
Building OTT to get TOGC, conditions	1.5
Discussion on anti-avoidance	1
SDLT calculation on transfer and compliance	2
Other considerations	
Capital goods scheme consideration	1
Conclusion to purchase shares	0.5
TOTAL	**20**

Answer 6

Purchase of the land

As the landowner has exercised an option to tax on the land,£71,000 of VAT is due on the £ selling price. As the land will be for a mixed use, it is not possible for the option to tax to be disapplied compared to if Ann was purchasing the land solely for her holiday home Ann may be able to recover some of this VAT, discussed below.

SDLT will be due by Ann on the purchase of the land. It will be treated as non-residential and will be due on the VAT inclusive amount of £426,000.Total SDLT due is:

SDLT at 0% on first £150,000 £	SDLT at 2% on next £100,000 £	SDLT at 5% on balance of £176,000 £	Total SDLT £
0	2,000	8,800	10,800

Ann must submit an SDLT1 form to HMRC within 14 days of the effective date, usually completion.

Construction of Ann's holiday home

Paragraph 2 and 4, Group 5, Schedule 8, VATA 1994, allows for most construction services provided with respect to a dwelling to be zero-rated however building materials supplied on their own without the provision of labour services such as installation will be standard-rated. Services specifically excluded from the zero-rating under Paragraph 2, Group 5, Schedule 8, VATA 1994 include architect, surveyor or consultant services.

The construction costs of £250,000 should be zero-rated. .Ann should be charged VAT of £3,080 (£15,400 x 20%) on the other costs being incurred.

Ann can claim a VAT refund from HMRC for some of the building materials bought under the DIY housebuilders scheme, s35, VATA 1994. *Mrs Irene Susan Jennings v HMRC (TC00362)* found that recovery should be allowable under the DIY scheme as holiday homes are dwellings for a non-business purpose. However, Ann will only be able to claim a refund for the VAT charged for the kitchen units as bathroom units, carpets and architect fees are not eligible costs under this scheme. If one of the bathroom units merely provided support and plumbing for the sink then that would be recoverable as building materials.

Ann should process her claim online or complete form 431NB no later than six months after the completion of the construction and supporting evidence such as relevant invoices must be sent with the form.

Conversion of the barn

The construction costs on the conversion of the barn into four furnished apartments should be subject to the reduced-rate under Group 6, Schedule 7A, VATA 1994 as there is a change in use of the building into a number of dwellings. However, the reduced rate will only apply to the £200,000 conversion costs. All other costs (including furnishings) will be standard rated.

The DIY housebuilders scheme cannot be used by Ann as they are for business purposes.

Registration

As Ann will be renting the furnished apartments out, this is a business activity which falls outside of the exemption for land related supplies under Paragraph 1(e), Group 1, Schedule 9, VATA 1994 and will require Ann to register for VAT. Ann must register for VAT when the taxable turnover breaches the £90,000 registration threshold though, she may voluntarily register before this. Ann can claim pre-registration input tax on services she received up to six months prior to her effective date of registration and for goods, up to four years prior. Waiting to register may cause the input tax on, for

example, architecture services to fall out of date so Ann should register as soon as possible to secure this input tax.

Under the Value Added Tax (Input Tax) Order 1992 (SI 1992/3222), certain input tax on building materials cannot be recovered and this includes VAT on bathroom units and carpets. VAT of £12,900 on construction costs (£200,000 x 5%), kitchen units (£8,000 x 20%) and architect fees (£6,500 x 20%) can be recovered. However, where these are attributable to the standard rated holiday lets, these should be recoverable by Ann.

Registering for VAT also means Ann will be required to charge VAT at the standard rate on the rent of the furnished holiday lets. Ann may choose to absorb some of this VAT cost to remain competitive with the local area.

Landowner's proposal

The freehold sale of an apartment would be zero-rated as outlined in item 1,Group 5, Schedule 8, VATA 1994 as the apartment would be considered a dwelling. The blocking order would apply in this case to the carpets and bathroom units.

If Ann entered into a five-year lease with the former landowner, this would be an exempt supply but would secure Ann ongoing income in the form of rent. Ann should restrict input tax recovery on costs she incurred that were attributable to the leased apartment. Ann should consider putting in place a sectorised partial exemption method to restrict recovery on costs attributed to the exempt letting of the apartment.

Marking Guide

Topic	**Marks**
Option to tax	
Option to tax – no disapplication or apportionment and issue of 1614D	0.5
SDLT	
Mixed use – non residential rates	1
Calculation	1
Construction of holiday home	
Zero-rating for construction services apart from architect etc, no certificate required	1
Standard rating for building materials (item 4)	0.5
DIY housebuilders	
Eligibility	1
Evidence required	1
Time limits and form	1
Conversion of barn	
Liability of services	1
Can't use DIY as for business purpose	0.5
Registration and compliance	
Liability of supplies i.e. falls outside land exemption	1
Recoverability of input tax	1
Discuss of when Ann must/should register	1
Pre registration input tax	0.5
Blocked input tax	1
Landowner's proposal	
Freehold sale zero-rated	1
Lease being exempt, input tax restrictions and consideration of partial exemption special method	1
TOTAL	**15**