The Chartered Institute of Taxation

Advanced Technical

Domestic Indirect Taxation

November 2021

Suggested solutions

ANSWER 1

Current Position

Walkerderm Ltd has two different types of patient – dermatology patients and cosmetic patients. Cosmetic patients can receive a mixture of services and goods, while dermatology patients only receive services from Walkerderm Ltd (though they may be prescribed drugs to be supplied by a pharmacist).

All the services are provided by a registered medical professional and, therefore, potentially exempt. In respect of the dermatology services Dr Walker sees the patients and provides her expert medical opinion. She then provides medical care as needed. These services are exempt from VAT under Item 1 Gp 7 Sch 9 VATA 1994.

However, following the case of *D'Ambrumenil (C-307/01) [2005] STC 650* and the recent case of *Skin Rich Ltd [2019] UKFTT 514 (TC)*, it is clear that not all such services qualify as exempt "medical care". In particular, purely cosmetic treatments are not regarded as being "medical care".

Accordingly, Walkerderm Ltd's cosmetic treatments would be taxable at the standard rate.

The goods currently provided by Walkerderm Ltd fall into two categories: "injectables" such as Botox, and the other non-prescription goods.

As the "injectable" goods are provided at the time of the appointment and the cost is included in a single fee, these are clearly part of the overall supply of cosmetic services. This means they will be standard-rated as part of the main supply.

The non-prescription goods provided would amount to a separate supply and so are standard-rated.

The £5,000 referral fee from the pharmacy next door is standard-rated.

Pharmafix Ltd

Pharmafix Ltd's supplies resemble those in *Medacy Ltd [2019] UKFTT 576 (TC)*. In that case, the FTT found that the provision of pharmacists to medical businesses could amount to the exempt supply of pharmaceutical services, where the supplier supervised the work of the pharmacists and insured their work. This would mean that Pharmafix Ltd would make exempt supplies to Walkerderm Ltd.

Whether a supply is of staff or of services is however a complex question. Other cases, such as *Moher [2012] STC 1356* or *City Fresh Services [2015] UKFTT 364 (TC)*, have reached different conclusions on similar facts. It may therefore be prudent for Walkerderm Ltd to ask that Pharmafix Ltd's fees be VAT inclusive, so that, should any VAT be found to arise, it will be for Pharmafix Ltd to bear the cost.

Walkerderm Ltd's goal is to increase its profits by dispensing prescription goods directly to its patients. Whereas zero-rating would allow input VAT to be recovered on prescription goods purchases (if Walkerderm Ltd were registered for VAT), exempt supplies would prevent input VAT recovery.

Pharmafix Ltd has stated that zero-rating will apply. The zero-rating rules require that:

- a registered pharmacist dispenses the goods subject to a prescription; and
- that the goods are for a patient's "personal use"; and
- are not supplied to a patient either resident in a hospital or nursing-home or attending a hospital or nursing-home.

The case of *Dr Beynon and Partners [2005] STC 55 HL* suggests that Walkerderm Ltd's proposal for "holistic skincare" would be a single exempt supply of medical services with an ancillary supply of prescription goods.

However, the case of *Healthcare at Home Ltd (2007) VTD 20379* suggests that where the patients self-administer the prescription goods, Walkerderm Ltd could zero-rate them if the goods were dispensed by a pharmacist.

The holistic skincare proposal is that the goods are all dispatched to the patient's home, which would meet the zero-rating rules, and it is also clear that the patients can self-administer the prescription goods. Accordingly, it appears that Walkerderm Ltd could zero-rate its supplies of prescription goods to patients if they were separate from the supply of exempt medical care.

In order to avoid exemption under *Dr Beynon,* Walkerderm Ltd could also consider changing its pricing so that patients pay a separate price for the goods, have a choice as to whether they purchase them from Walkerderm Ltd and have them dispatched to their home address. This would make the supply of prescription goods a separate supply, and so eligible for zero-rating.

Walkerderm Ltd will need to determine whether or not it has exceeded the VAT threshold. At first glance, its taxable supplies are below the VAT registration threshold of £85,000 per annum. However, sales of zero-rated prescription goods would count as taxable supplies and could lead it to exceed the threshold.

Walkerderm Ltd needs to focus on the commercial rationale for the holistic skincare proposal. The costs of having to charge VAT on cosmetic supplies must be weighed against any benefits from zero-rating and against the fees to be paid to Pharmafix Ltd for the supplies of dispensing pharmacists.

MARKING GUIDE

TOPIC	**MARKS**
Requirement 1: identify VAT treatment of various supplies	
Key topic: liability of supplies	
Point 1: identify different treatment of goods and services and issue of multiple supplies	1
Point 2: correctly identify exemption applies to the dermatological medical care	1
Point 3: identify taxable non-medical care services and refer to *D'Ambrumenil*	1
Point 4: identify single supply of SR cosmetic care and refer to *Skin Rich Ltd*	1
Requirement 2: assess the viability of the Pharmafix Ltd proposal	
Key topic 1: supply of staff or supply of services	
Point 1: identify issue of staff versus services	1
Point 2: identify possibility of exemption and basis for same with reference to Medacy Ltd	2
Point 3: identify uncertainty of treatment of services vs staff and refer to case law, e.g.: *Moher, City Fresh*	1
Key topic 2: supply of zero-rated goods	
Point 1: identify conditions for zero-rating pharmaceutical goods dispensed by pharmacists	1
Point 2: address question of goods and *Dr Beynon*	2
Point 3: identify separate charge for goods under holistic services package and possible E/ZR liability (*Healthcare at Home*)	1
Point 4: identify changes needed to business model to allow for zero-rating with Pharmafix Ltd	1
Point 5: advise on question of VAT registration and ZR goods as part of the taxable supplies and commercial impact	1.5
PHS	0.5
TOTAL	**15**

ANSWER 2

Jungle in the Barn ("JIB")

Input tax recovery under the flat rate scheme ("FRS") is not advantageous, although traders are entitled to recover input VAT on the purchase of "capital expenditure goods".

In deciding whether they have purchased "capital expenditure goods", the partnership must consider:

- whether they are receiving goods or services;
- if goods, whether they amount to "capital expenditure goods"; and
- if they do qualify as capital expenditure goods, whether they cost more than £2,000 inclusive of VAT.

The expansion would cost £100,000 plus VAT on three new puzzle rooms. Although this expenditure is likely to be capitalised in the accounts and is in excess of the £2,000 limit, caselaw has found that the relevant test is what was purchased from the supplier. Roombuild Ltd is providing design and construction services together with the relevant materials, which is a single supply of services under para 15.4 of Notice 733. This means that the partnership cannot reclaim £20,000 of input VAT.

Rare Breed Sheep Farm ("RBSF")

The only input VAT lost under this plan would be £2,000 on the marketing campaign, because the purchase of additional animals would be zero-rated.

Refurbishment Works

Just as the JIB expansion would be regarded as a supply of construction services, so would the refurbishment work. This means that the £30,000 input VAT on the £150,000 of expenditure would not be recoverable.

However, it is clear that the partnership is acquiring "capital expenditure goods" with the £18,000 of specialist equipment and, therefore, some £3,600 of input VAT should be recoverable.

The large loss of input VAT on the works under the FRS suggests that it should be compared with standard VAT accounting.

Comparison of FRS and Standard VAT Accounting

VAT Basis	Total Turnover	Gross Output VAT Rate	Output VAT Cost	Input VAT Recovered	Net VAT Cost
	£	%	£	£	£
Total FRS	**£220,000**	**12%**	**£26,400**	**£3,600**	**£22,800**
Standard VAT (JIB and Wool Sales)	165,000	16.67%	27,500	55,600	(28,100)
Standard VAT (Sheep Sales)	55,000	0%	0	0	0
Totals Standard VAT	**£220,000**		**£27,500**	**£55,600**	**(£28,100)**

Standard VAT accounting would see a significant VAT saving of £50,900 (£22,800 plus £28,100) in Year One. Moreover, standard VAT accounting would only cost an additional £1,100 per annum in output VAT. Accordingly, it would be much more advantageous for the partnership to leave the FRS.

Exiting the FRS

It should be noted that a total increase in sales of £60,000 would mean that the partnership's gross turnover would be £220,000, which is close to the £230,000 threshold for exiting the FRS. If the firm's sales did exceed this level, it would have to exit the FRS with effect from the next quarter after its next anniversary of entering the FRS.

Given the savings involved, however, the partnership would be well advised to leave as quickly as possible.

In order to do so, they should write to HMRC stating their preferred exit date. They should no longer apply the FRS to their supplies from that date, even if they have not yet received confirmation of their exit date from HMRC.

Note that HMRC will accept a date in the previous accounting period where the partnership has not yet submitted its return under the FRS rules.

Once the partnership leaves the FRS, it may be able to recover input VAT on any stock it has on hand by way of a stock adjustment. However, it will also have to carry out a self-supply adjustment on any capital expenditure goods which are on hand at the date of exit – namely, the specialist equipment purchased as part of the refurbishment (if already acquired).

Capital Goods Scheme

Adding together the JIB expansion works, the total amount of construction expenditure would be £250,000 plus VAT. The partnership could thus be regarded as having acquired a Capital Goods Scheme ("CGS") item, which would require the partnership to leave the FRS. However, this would not be of great concern.

Nevertheless, the acquisition of a CGS item would require that the partnership monitored the taxable use of the asset for a 10 year period. Currently, this would not create any difficulties, since the business is fully taxable. However, if its use were to change in future, it may have to repay some of the VAT on the works.

To avoid the CGS treatment, the partnership should ensure that there are separate contracts for the two different projects, which ideally should be undertaken at different times. This would hopefully avoid the aggregation of the expenditure on the works into a single CGS item, though it could be subject to HMRC challenge.

MARKING GUIDE

TOPIC	MARKS
Key topic 1: Assessment of Expansion Plans	
Point 1: JIB expansion proposal: set out the basic rules on input VAT recovery under the FRS and the capital expenditure exception	1.5
Point 2: correctly classify the different supplies being made by Roombuild Ltd, explaining that all will likely be regarded as services *Eventful Management Ltd (2007) VTD 20300* and *Sally March [2009] UKFTT 94 (TC)* (No need to mention cases for credit)	1.5
Point 3: RBSF expansion proposal: identify zero-rated inputs on sheep	1
Point 4: Refurbishment works: identify same treatment as JIB and also correctly identify allowable input VAT on specialist equipment	1.5
Key Topic 2: Comparison of FRS and Standard VAT Accounting	
Point 1: summary table comparing impact; correct figures; conclude standard VAT accounting is advantageous	2.5
Key Topic 3: Exiting the FRS	
Point 1: Point out increased sales are close to exit threshold	0.5
Point 2: Advise exiting as early as possible and method for doing so	1.5
Point 3: Advise on implications of exiting FRS, including stock adjustment and self-supply charge	1.5
Key topic 4: Capital Goods Scheme	
Point 1: note that the £250,000 total is close to the "capital item" for CGS purposes threshold; requirement to exit FRS but not really concerning; summarise impacts over next 10 years	1.5
Point 2: suggest that the firm ensures separate contracts for the different works and arranges it takes place at different times	1.5
PHS	0.5
TOTAL	**15**

ANSWER 3

SDLT

Purchase of Residential Portfolio

The sale of Abdul LLP's portfolio to Abdulco Ltd is a transfer from a partnership, as in para 18 Sch 15 FA 2003. (All further legislative references are to FA 2003, unless otherwise stated.)

This means that the chargeable consideration is calculated using the "sum of the lower proportions" ("SLP"). As Abdulco Ltd is a connected party for Mohamed and he controls it as to 100%, no SDLT will arise under para 18 on the 60% of the assets he already owns via Abdul LLP, so Abdulco Ltd will only pay on 40%.

Applying the SLP of 40% to the residential consideration of £3,205,000 comes to £1,282,000.

Note that under s 116(7), a transfer via a single transaction of more than six dwellings is treated as a transfer of non-residential property. In other words, commercial rates of SDLT apply. However, under Sch 6B the taxpayer also has the choice of applying "multiple dwellings relief" ("MDR") for transfers of more than six dwellings. MDR is considered below and the two bases are compared.

On the basis of s 116(7), the SDLT is calculated as follows:

Price	SDLT Rate	SDLT Charge
£		£
150,000	0%	0
150,000 to 250,000	2%	2,000
Balance 1,032,000	5%	51,600
TOTAL		**£53,600**

However, we must also look at MDR.

MDR Claim

As eight dwellings are being transferred, Abdulco Ltd has a right to claim MDR. MDR operates by totalling the consideration for the residential properties and then dividing it by the number of such properties, as follows. The rates for residential property are then applied.

Total dwellings consideration: (£3,205,000 x 40%)/ 8 = £160,250 per dwelling.

The rates applicable include the additional 3% charge for a sale of residential property to a company:

Price	SDLT Rate	SDLT Charge per Dwelling
£		£
0 to 125,000	3%	3,750
125,001 to 160,250	5%	1,762
TOTAL		**£5,512**

Multiplying this figure by eight produces a total dwellings SDLT charge under MDR of **£44,096** (£5,512 x 8). This compares to £53,600 on the s 116(7) basis, meaning it is more advantageous to claim MDR.

Accordingly, the SDLT charge on the sale of the portfolio comes to **£44,096.**

Purchase of New Building

Under s 55, the new building will be regarded as "mixed property", and therefore the rates applicable to non-residential property will apply to the sale. The commercial element will be subject to VAT at 20% (see below) and so the consideration for SDLT is £508,000 (£160,000 plus £290,000 x 1.2)

The SDLT is calculated as follows:

Price	SDLT Rate	SDLT Charge
£		£
150,000	0%	0
150,000 to 250,000	2%	2,000
258,000	5%	12,900
TOTAL		**£14,900**

SDLT Administration

The transfer of the LLP portfolio to Abdulco Ltd will be a notifiable transaction and the MDR claim must be included on the return.

A separate SDLT return should be submitted to HMRC in respect of the purchase of the new property.

Both returns should be submitted to HMRC within 14 days of the effective date of the relevant transaction.

Along with the return, Abdulco Ltd should provide a self-assessment of the tax and the full payment of £44,096 for the purchase of the LLP portfolio and of £12,000 for the purchase of the new property.

VAT

Purchase of Residential Portfolio

The transfer of properties from Abdul LLP to Abdulco Ltd will be disregarded for VAT purposes, as it is happening within the VAT group. Once the LLP is wound up, the VAT group will have to be disbanded and HMRC should be informed within 30 days by means of forms VAT 50 and VAT 51. Abdulco Ltd will then need to apply for VAT registration in its own right by means of form VAT 1, which should be sent with the other forms. It will not be able to retain the group's VAT number.

Abdulco Ltd should be able to reclaim some of the input tax on the professional fees involved, but as it will be a partially exempt business following the transfer, it will need to carry out a partial exemption calculation to establish how much of the input tax it can reclaim.

It would also be prudent to consider a special method for calculating partial exemption ("PESM"), as the standard method is unlikely to give a fair result. As the income stream for the exempt residential portfolio are likely to just flow in, the costs of managing this are likely to be much lower than the costs for the taxable elements of the company's business. A method related to costs incurred may be a practical solution, but will need to be agreed with HMRC, which may take some time.

Abdulco Ltd will also need to be aware that Capital Goods Scheme adjustments may be required in respect of the headquarters if there is any change in the amount of exempt use after the transfer. The calculation is normally based on the partial exemption recovery rate of the business as a whole. Mohamed should be aware that any lost input VAT will be a real cost to his business after the transfer.

Purchase of New Building

A purchase of the freehold in a new commercial building is a standard-rated supply. Therefore VAT of £58,000 (£290,000 x 20%) will arise on the sale. The supply of a new dwelling is zero-rated, and therefore no VAT will arise on this element.

In order for Abdulco Ltd to reclaim the input VAT on the commercial element, it will need to opt to tax the property. This will make any onward supplies of the commercial property subject to VAT at the standard rate. It will also permit recovery of all of the related input VAT.

The option to tax will not be applicable to supplies of the apartment, under para 5 Sch 10 VATA 1994. Accordingly, any onward supplies will be exempt from VAT and the recovery of related input VAT will be restricted accordingly.

MARKING GUIDE

TOPIC	MARKS
Requirement 1: Calculate the SDLT liability and advise on the relevant administration	
Key topic 1: Calculate the SDLT liability for the purchase of the LLP portfolio	
Point 1: identify the correct statutory basis for calculating the charge on a transfer of this kind (para 18, Sch 15, FA 2003)	2
Point 2: explain the basis for and correctly calculate the SLP share to be used in the overall calculation	1.5
Point 3: identify issue of multiple dwellings relief (Sch 6B) vs. s 116(7) non-residential rates	1.5
Point 4: correctly calculate the total SDLT due, on both bases, and correctly identify that MDR is advantageous; conclude on SDLT liability due	2
Key topic 2: Calculate the SDLT liability for the purchase of the new building	
Point 1: identify the fact that this is a mixed transaction under s 55 and that therefore commercial rates of SDLT apply	2
Point 2: correctly calculate the SDLT due on this transaction	1.5
Key topic 3: Advise on the SDLT administration	
Point 1: State that these are notifiable transactions	1
Point 2: Correctly state the deadline for notification and payment	0.5
Requirement 2: Advise on the VAT implications of the transactions	
Key topic 1: the VAT group	
Point 1: identify that there is no supply for VAT purposes within the group	1
Point 2: advise as to the administration necessary to winding up the VAT group	1
Key topic 2: VAT position after the transfer of the LLP	
Point 1: advise that Abdulco Ltd will need to seek a new VRN	1
Point 2: advise on partial exemption and CGS issues for Abdulco Ltd post-transfer	1
Key topic 3: VAT issues on purchase of new building	
Point 1: correctly identify standard-rated and zero-rated liabilities of the different parts of the property	1
Point 2: correctly identify potential use of option to tax, and implications for output tax and input tax on commercial element	1
Point 3: correctly state that option to tax will not apply to supplies of the apartment and the implications of this for input tax recovery	1
PHS	1
TOTAL	**20**

ANSWER 4

Works of Art

The supply of paintings in the UK by their creator, in the course or furtherance of business, is subject to standard rate VAT.

Classroom Courses

The supply of private tuition is VAT exempt where the subject is ordinarily taught in a school or university and supplied by an individual teacher acting independently of an employer (item 2 Group 6 Sch 9 VATA 1994).

Art is a subject ordinarily taught in schools and universities, although this may not be true of street art.

In *Anna Cook v HMRC [2019] UKFTT 321 (TC),* the Tribunal found that Ceroc dancing is a subject ordinarily taught in schools and universities, as it includes techniques which have a broad application to the subject of dance. This decision was however overturned by the Upper Tribunal which found Ceroc is a distinct form or style of dance which was not commonly taught in schools. [2021] UKUT 0015 (TCC) [*Examiner's comment – no need to refer to the appeal to gain marks as after syllabus cut-off*].

Street art could be considered too narrow to be regarded as teaching the subject of art, (especially following the Anna Cook appeal). However, the techniques taught have a broad application to other forms of art, which supports the view that it is tuition in art (as opposed to just a form or style of art).

Courses which are purely recreational do not fall within the exemption (*W Haderer v Finanzamt Wilmersdorf (C-445/05)*). The course is designed to impart knowledge and skills to customers and is a serious course of study, including assessment of the customer's learning. It is not purely recreational.

It is reasonable to conclude that the classroom course qualifies for the exemption, to the extent it is taught by John, as a sole proprietor. The exemption does not however extend to the classes taught by his employee and so these would be subject to VAT. This is a single taxable supply of services, although in practice HMRC allow apportionment between taxable and exempt supplies, on a fair and reasonable basis.

The partial exemption rules will apply, which means that John will not be entitled to reclaim input VAT to the extent that costs are used in making exempt supplies, subject to the de minimis limits.

Course Manual and Guided Tour

Train travel and catering are margin scheme supplies for the purposes of the tour operators' margin scheme ("TOMS"). Standard rate VAT must be accounted for on the profit margin relating to the transport and catering. Any input tax incurred on the restaurant meals cannot be reclaimed.

The other elements of the package form a single in-house supply of private tuition. The TOMS rules should be used to calculate the output tax due on the classroom course fees. This is because the course manual and the tuition are so closely linked that they form objectively, from an economic point of view, a whole transaction, which it would be artificial to split (*Levob Verzekeringen and OV Bank v Staatssecretaris van Financien (C-41/04)*). Input VAT on overheads and purchases relating to in-house supplies can be reclaimed.

The TOMS calculations should be used to apportion the consideration between taxable and exempt in-house supplies of private tuition. As a business starting to use TOMS for the first time, a provisional percentage will need to be used during the first financial year under TOMS. This could be based on projected costings and margins or actual figures during the first year. A year-end calculation must then be performed, so that any necessary adjustment can be made in the first VAT period after the financial year end.

One of the features of TOMS is that a VAT invoice must not be issued to the customer, but this is unlikely to be an issue for private individuals.

The TOMS calculations can be relatively complex and may result in a disproportionate administrative burden for John, as the margin scheme supplies are relatively small. John may wish to consider removing the train travel from the package, so that the TOMS rules do not apply. Catering only falls within TOMS if supplied with other margin scheme supplies. John could still arrange the purchase of train travel for customers, but he would need to ensure that he acts as a disclosed agent.

Art Materials

The sale of art materials is a separate supply which is subject to standard rate VAT, as purchasing the materials is optional. The exemption for closely related goods and services does not apply to private tuition as item 4 Group 6 Sch 9 VATA 1994 only applies to services falling within item 1.

Distance Learning Courses

The course manual would be taxable at the zero rate, if supplied separately. However, customers receive other benefits which would be taxable at the standard rate, if supplied separately. It is necessary to consider whether there is a single or multiple supply.

In *The College of Estate Management v HMRC, HL [2005] STC 1597,* the House of Lords found that the supply of distance learning courses including printed study material, face to face tuition and online study material is a single supply. The same conclusion was reached by the Upper Tribunal in *Metropolitan International Schools v HMRC, [2017] UKUT 431(TCC)*, on the basis that the course was a single service from an economic point of view. It specifically rejected use of the principal/ancillary test adopted by the CJEU in *Card Protection Plan Ltd v HMRC (C-349/96).*

It would be artificial to split the course into the different elements. The course manual cannot be regarded as the predominant element, as other elements provide significant value to the customer. It is a single supply from the point of view of a typical customer.

The next step is to identify the nature of the supply from the point of view of the typical customer, including whether it is one of goods or services (*Levob)*. Based on an objective view of each of the components being supplied, it would most likely be treated as a package of educational services. The service will only qualify as exempt private tuition if it is provided by an individual teacher. The distance learning course is primarily a self-study course, with only limited interaction between John and the customers. Therefore, the service will not qualify for the private tuition exemption and will be taxable at the standard rate.

The examination services are subject to standard rate VAT, as they do not meet the criteria set out in item 3 Group 6 Sch 9 VATA 1994.

MARKING GUIDE

TOPIC	MARKS
Artwork	
Liability of supplies	0.5
Classroom courses	
Exemption for private tuition	1
Whether ordinarily taught in schools or universities (marks are for a discussion of principles and no need to name cases)	2
Whether purely recreational	0.5
Whether taught by an individual acting independently of an employer	1
Entitlement to apportion	1
Course Manual and Guided Tour	
Identifying margin scheme and in-house supplies	2
Use of TOMS calculations to apportion consideration	1
Output tax and input tax implications	2
Use of provisional percentage, basis and timing of calculations	2
Possible use of disclosed agency to remove TOMS issue	2
Distance learning courses	
Single v multiple supply	2
Liability of supply – whether private tuition by an individual teacher	1
Liability of examination services	1
Presentation and higher skills	1
TOTAL	**20**

ANSWER 5

LPA Receiver

As Propco 2016 Ltd has opted to tax the property, the rent due from Oak 2015 Ltd is taxable at the standard rate. An LPA receiver acts as agent for the VAT registered business. The VAT invoice should be issued by the Receiver as agent for Propco 2016 Ltd and the output tax accounted for using form VAT 833. Input tax on supplies made to Propco 2016 Ltd can be deducted from the output tax due. If input tax exceeds output tax, the VAT 833 process cannot be used to claim a VAT repayment.

Charity Tenant

As Propco 2016 Ltd has made an option to tax, the rents charged to Pine 111 Ltd would normally be subject to standard rate VAT. The option to tax is however disapplied where the building (or part) is intended to be used solely for a relevant charitable purpose ("RCP"), but not as an office.

The property is a capital item for the purposes of the Capital Goods Scheme ("CGS"). The disapplication of the option to tax could result in CGS adjustments due to HMRC of approximately £100,000 (£400,000 VAT on the property purchase x 50% taxable use x 5/10 years). Disapplication would be detrimental to Propco 2016 Ltd.

RCP includes use by a charity for non-business activities, such as a call centre for collecting voluntary donations (Notice 708). It appears that the charity will use the premises solely for an RCP, although the Receiver should take reasonable steps to verify this. HMRC's policy is that a certificate is not required, as it is sufficient for the charity to notify the landlord of the intended use. The notification can be made at any time and, if the requirements are satisfied, the option to tax will be disapplied from that point onwards, resulting in any subsequent supplies being VAT exempt.

The disapplication rule does not apply if the building (or part) is intended to be used as an 'office' (Notice 742A). HMRC's policy is that office means use for general administrative functions, such as HR and payroll. HMRC's view is that use as a call centre for collecting donations would not be "use as an office". There is no apparent legal basis for this. As 'office' is not defined in VAT law, it should be given its ordinary meaning, which the average person in the street would probably consider to include use by call centre personnel to perform work at desks, using computers, telephones etc.

The Receiver should consider rejecting the tenant's notification on the basis that use of the property as a call centre is use as an office. Legal advice should be taken before doing so and consideration given to seeking an HMRC clearance, as there is a risk that this approach could result in a dispute between the parties. Alternatively, legal advice should be taken to confirm whether CGS costs suffered can be recovered from the charity.

Sale of Furniture

Output tax should be accounted for on the consideration for the supply of the office furniture. Consideration includes monetary and any non-monetary consideration.

The contractor and Propco 2016 Ltd have each made a supply to the other. The contractor supplied dismantling services. Propco 2016 Ltd supplied goods, namely office furniture. There is a direct and immediate link between the goods supplied and services received, as the goods were supplied on condition that it received services.

When deciding to transfer the goods to the contractor for no cash consideration, Propco 2016 Ltd must have taken into account a value which it had assigned to the dismantling services, such that the services formed non-monetary consideration (*A Oy v Veronsaajien oikeudenvalvontayksikko (C-410/17))*. It would appear that Propco 2016 Ltd assigned a value of £1,200 plus VAT to the dismantling services, being the difference between the contractor's original quote and the discounted quote (£1,700 less £500 is £1,200).

Output VAT of £240 (£1,200 x 20%) should be accounted for on Propco 2016 Ltd's supply of goods.

The Receiver must declare the output tax on form VAT 833 and make payment by electronic bank transfer within 21 days of the sale. It must issue a VAT invoice to the contractor, showing the name, address and VAT number of PropCo 2016 Ltd. A copy of the VAT 833 must be sent to Propco 2016 Ltd.

As the contactor is VAT registered, it should provide Propco 2016 Ltd with a VAT invoice for its supply of services. Propco 2016 Ltd would be entitled to deduct the input tax, which the Receiver can achieve by deducting it from the output tax declared on the VAT 833.

MARKING GUIDE

TOPIC	MARKS
LPA Receiver	
The Receiver acts as agent for Propco 2016 Ltd	1
The Receiver should issue VAT invoices as agent for Propco 2016 Ltd	1
Output tax should be declared on form VAT833	0.5
Input tax can be deducted on form VAT833, but no VAT repayments	0.5
Office Leases	
Liability of rents charged to Oak 2015 Ltd	0.5
Does Pine 111 Ltd intend to use the building solely for an RCP	2
Impact of disapplication – estimated CGS adjustments	1
Certificate required or is a letter sufficient	2
Use as an office – HMRC's policy and legal basis	2
Whether use as a call centre is use as an office	1
Sale of Furniture	
Sale of furniture – non-monetary consideration	2
Value of supply of furniture	1
Presentation and higher skills	0.5
TOTAL	**15**

ANSWER 6

Assessment Time Limits

Provided the inaccuracies are ultimately found to be deliberate, the six year period of assessment would be within the 20-year capping period. The assessment appears to have been made within one year of HMRC having sufficient evidence of fact, as it was issued within 12 months of Mr Peel's letter of December 2020.

Best Judgement

An assessment must be made using best judgement. HMRC are not required to do the work of the taxpayer, but it must not be arbitrary or involve guesswork.

HMRC must take into account information provided. Mr Peel provided information concerning stolen parts, yet the calculations do not allow for this, nor are there adjustments for wastage or opening/closing stock.

This casts doubt on whether the assessment was made in best judgment. An appeal on this basis should be considered.

Amount of the Assessment

It is reasonable to assume that theft of parts took place during the sample period. The stolen parts would not be available for sale and this should be reflected in HMRC's calculations.

HMRC's calculations should be reworked, including adjustments for theft, wastage and opening/closing stock and checked back to the source data for stock purchases. If this still shows a significant underdeclaration, further work will be needed to establish the reasons (e.g. wrong mark-up applied/seasonal variations). If cash was stolen by the former employee, it could have resulted in an underdeclaration of output tax, if it resulted in sales being understated

If the above work reduces the Inaccuracy Percentage to nil, or thereabouts, this will be strong evidence to appeal against the entire assessment. If a discrepancy remains, an appeal can be made, seeking a reduction in the amount of the assessment.

Penalty

HMRC may impose a penalty of up to 100% of the potential lost revenue (PLR), as they believe the inaccuracy was deliberate and concealed. Any reduction to the VAT assessment should result in a corresponding reduction in the penalty amount. Reworking HMRC's calculations could eliminate or reduce the amount of the penalty.

An appeal could be made on the grounds that there has not been a deliberate underdeclaration. The burden of proof lies with HMRC and they do not appear to have any compelling evidence to support this. If successful, HMRC may still seek to impose a penalty of up to 30% of the PLR for errors resulting from a lack of reasonable care. The assessment period would be reduced to four years.

The fact that the VAT returns are prepared by an external accountant, who also prepares bank reconciliations, stock checks and financial statements, lends credibility to Mr Peel's assertion that he has no knowledge of the underdeclarations, as does the good compliance history. This should help to demonstrate 'reasonable care' and that no penalty should apply. If this is unsuccessful, any penalty should be reduced to take into account the 'quality' of the disclosure, including the help provided by Mr Peel.

Personal Liability Notice (PLN)

Where HMRC believe that a deliberate inaccuracy is attributable to an officer of the company, he/she may be held personally liable for up to 100% of the penalty. Mr Peel is a director and, therefore, an

officer of the company. HMRC's policy is to consider issuing a PLN where a company officer is believed to have gained personally from the deliberate inaccuracy.

A successful appeal against HMRC's decision that there has been a deliberate underdeclaration would mean the PLN must be withdrawn. If unsuccessful, the burden of proof is on HMRC to show that the inaccuracy and its deliberateness are attributable to Mr Peel's actions or omissions. Whilst he is the sole director, that does not necessarily mean that any underdeclaration is attributable to him. For example, if a member of staff has stolen cash from the business, resulting in an underdeclaration of output tax, unless Mr Peel knowingly submitted an inaccurate VAT return, he should not be personally liable for any penalty. There would appear to be good grounds to appeal against the PLN.

Appeal

Gasket Ltd should request an HMRC review of the decision to issue the VAT assessment and penalty or appeal both to the First-Tier Tribunal. Mr Peel should request that HMRC review their decision to attribute the penalty to him personally or appeal to the First-Tier Tribunal.

Any request for a review or lodging of an appeal must be done within 30 days of the date of the assessment/penalty notice. Gasket Ltd must pay the VAT assessment as a condition of lodging an appeal with the Tribunal, unless HMRC or the Tribunal accept that this would cause hardship. There is no such requirement for appeals by Gasket Ltd and Mr Peel against the penalty.

MARKING GUIDE

TOPIC	**MARKS**
Assessment time limits	
20 year v four year assessment period	1
One year after evidence of facts	0.5
Best judgement	
Meaning of best judgement and use of a 'parts to labour' calculation	2
Requirement to take into account information provided (Van Boeckel v HMRC [1981] STC 290)	1
Amount of the assessment	
Likely impact of theft of stock and cash on HMRC calculations	2
Wastage and open/closing stock adjustments	1
Penalty	
Penalty rate if deliberate and concealed	0.5
Penalty rate, reasonable care defence and reduction for disclosure, if not deliberate	2
Personal liability	
Personal liability of an officer	2
Burden of proof	0.5
Appeal	
Right to request a review or lodge an appeal and time limits	1
Whether payment of VAT upfront or hardship application required	1
Presentation and higher skills	0.5
TOTAL	**15**