Institution **CIOT - CTA**
Course **Adv Tech Domestic Indirect Tax**

Event **NA**

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Exam ID

Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**873**	**4048**	**4911**
Section 2	**435**	**1981**	**2415**
Section 3	**689**	**3345**	**4026**
Section 4	**765**	**3630**	**4384**
Section 5	**1142**	**5138**	**6266**
Section 6	**660**	**3211**	**3862**
Total	**4564**	**21353**	**25864**

Answer-to-Question-_1_

The supply of a lease of non-opted commercial property is exempt for VAT purposes, per Schedule 9, Group 1, Item 1.

In line with VAT grouping rules, supplies made between VAT group members are disregarded for VAT purposes.

In the absence of an option to tax (which appears to be the case here), the supplies made by OfficeRite Limited ('ORL') of the lease under the current lease arrangements will i) disregarded for the lease of to SmallStudy Limited and ii) VAT exempt to Together2.

Following the same principles, the sale of the 900-year lease from ORL to SmallStudy Limited will, in theory, be disregarded for VAT purposes provided the sale takes place when the entities are still part of the same VAT group.

Any input tax incurred on sale costs should be recoverable as residual input tax which would allow full input tax recovery.

However, there are specific anti-avoidance provision which provides the commissioners with the power to direct that a supply is deemed to take place as though the entities are not part of the same VAT group.

This is a direction from the commissioners, and would generally be relevant where the supply taking place within the VAT group provides a VAT advantage, namely where it is likely that input tax would be a cost to either the supplier or the customer.

Applying this to the situation at hand, should the supply of the 900-lease be made where

the entities were not part of the same VAT group, the supply would be exempt for VAT purposes.

As such, any input tax incurred which can be directly linked to the exempt sale of the lease would be irrecoverable. This would also have significant implications for the Capital Goods Scheme ('CGS') as set out below.

As such, there is a risk that the commissions would direct the supply to be treated as made in the absence of the VAT group.

Reburbishment costs

In terms of the input tax incurred on the refurbishment costs, consideration must be given to the extent that this should be recoverable.

In order for input tax to be recoverable there must be a direct and immediate link between the input tax incurred and taxable supplies made by the taxpayer.

This is complicated by the fact a large element of the supply is disregarded for VAT purposes, as an intra-VAT group supply. However, input tax should be recovered in line with the relevant partial exemption method / residual recovery rate at the relevant time.

Based on information provided to date, the residual recovery rate is assumed to be 100%.

In terms of the costs, it is likely that VAT was incurred as per the below:

New glazing on windows - £300,000 x 20% = £60,000.

Improvements to the roof - £450,000 x 20% = £90,000

New meeting rooms - £150,000 x 20% = £30,000

General painting and decorating - £30,000 x 20% = £6,000

Total input tax = £186,000

Note: there is zero-rating relief avaliable for the installation of energy saving materials, however this extended to dwellings and buildings intended solely for relevant charitable purposes. This is not the case here.

As the value of the VAT exclusive costs spend on a building exceeds £250,000 (excluding VAT) 1 NewRoad will be a CGS item for the purposes of the CGS.

Under the CGS, the taxable usage of the building needs to be monitored and relevant adjustments must be made where the taxable usage changes. The period of monitoring is 10 years.

Please see further below the relevance where the transfer takes place following 31 May 2025.

Legal title moving after 31 May 2025

On 1 June 2025, the shares in ORL will be sold. At this point, ORL and SmallStudy Limited will no longer be eligible to be part of the same VAT group and the group will be disbanded.

A grant of a 900-year lease is considered a supply of goods for VAT purposes, and the time of supply is considered to be where legal transfer and disposal rights have been transfered.

Therefore, where this occurs after 31 May 2025, the sale will be VAT exempt.

In this case, ORL will need to perform a sales adjustment for the purposes of the CGS.

For sale adjustment purposes, where the sale of the lease is VAT exempt all remaining adjustment periods will be considered on the basis the taxable usage of the property is nil. This will likely result in a large repayment due to HMRC, as full input tax will have been claimed.

Further details would need to be provided to consider the exact charge, however if the sale occurs in year 2 (for example) £148,800 would need to be repaid to HMRC by way of the sales adjustment.

How best to proceed

If it is possible, it would be recommended that where it is unlikely the freeholder consent will be granted before 31 May 2025, it is recommended that ORL seek to delay the sale of its shares.

This will protect the input tax recovery of the refurbishment costs. Of course, there is still a risk the commissioners could look to direct that the sale takes place as though the entities are not part of the same VAT group.

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

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

Answer-to-Question-_2_

1)

For BDR purposes, it is possible to claim BDR when a debt remains outstanding between 6 months and 4 years and 6 months from the date the debt was due for payment or the date of the supply. Whichever is later.

Therefore, where no invoice has been raised and the debt has not become payable it is not possible for BDR to be claimed.

In order to claim BDR, the debt must also be written off in the account.

Based on this, it would appear as though it has correctly claimed BDR in relation to the contracts expired more than 12 months ago and between 9 - 12 months ago.

However, as there has been no payment raised for the contracts expiring between 6-9 months ago then it should not have been possible to claim BDR. As such, the £10,000 BDR has been claimed in error.

It has correctly not claimed any BDR in relation to the contracts with a due date of less than 6 months ago.

When paymeent is received of 50% of the fact value of the contracts, DriveDifferent will

need to repay some of BDR claimed to HMRC.

As it is not possible for the payment of the face value contracts to be attributed to a specific contract, the attribution must be made to the earliest claims.

As such, £430,000 will be received. This should be allocated firstly to the payment outstanding of £120,000. Repayment of the £24,000 BDR must be made to HMRC.

Then the remaining should be allocated to the £360,000 leaving an outstanding balance of £50,000.

Where any future payents are received, these should be allocated accordingly as set out above and any BDR must be claimed.

2)

In the instances where the title passes to the vans, it can be seen that DriveDifferent is making a supply of Vans to the third-party leasing company. This is a supply of goods.

This will be subject to VAT at the standard rate and output tax should be accounted for accordingly.

In terms of the supply of the contracts for a discounted fee, this would be a supply of taxable contracts whereby rights to recive income transfers, for which output tax should be accounted for on the discounted fee charged. This would be the same even where the Van remains with DriveDifferent.

The income passed back from the leasing company to DriveDifferent will not be a supply

for VAT purposes, as it is understood that income was DriveDifferents, per the agreements in place with the third party leasing company and it is simply collecting monies on behalf of DriveDifferent.

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

----------ANSWER-3-BELOW----------

Answer-to-Question-_3_

1) VAT

The supply of domestic appliances will be subject to VAT at the standard rate. As such, output tax should be due at 20% of all sales.

In terms of the extended warranties provided under the loyalty scheme, as there is no considered received for this this is not a supply for VAT purposes.

In terms of the loyalty scheme, there was a recent case which considered a similiar arrangement, Simple Energy.

In this case the taxpayer operating a refer a friend scheme and argued that any credit provided to the customer which successfully referred a friend was a reduction in the consideration paid by the customer for the supplies, thus reducing the output tax liability accordingly.

The court disagreed with this, and found in favour of the tax authority which was that the credit provided to the customer was actually consideration for a service provided by the customer, a referral service. As such, it could not reduce the output tax due on the supplies made to the customer otherwise.

Applying these principles to WhyteGood, it is accepted that a discount provided would

reduce the consideration. As such, the 5% discount offered to the new customer would reduce the consideration by 5% and output tax should therefore only be due on 95%.

However, the £20 credit voucher provided to the customer which successfully referred their friend cannot be applied on the same basis. Instead, it is consideration for a referral service provided by them. It is therefore not possible to reduce the consideration of any supplies made to this customer by the £20 credit.

As such, output tax is due on the whole value of the supplies made to this customer.

2) IPT

Insurance Premium Tax is levied on contracts for insurance. The legislation does not specifically define such contracts however a contract is generally accepted to be considered a contract of insurance where the following conditions are met:

There is a legally enforceable contract

The insured party pays a premium

The insured party has an 'insurable' interest

The premium charged is with reference to the claims it is expected to meet

The contract is of utmost faith

Extended warranties

The higher rate of IPT is due on insurance provided in relation to domestic appliances where the contract is supplied or arranged through the supplier of the domestic appliances. This is the case here.

As such, IPT at the higher 20% rate will be due on the premium.

Commissions can be a little bit complicated for IPT purposes, and how these are accounted for will depend on whether the commission is disclosed or undisclosed and party of a separate agreement.

This appears to the case here. As such, for IPT purposes the commission must be accounted for separately by WhyteGoods Limited.

To be clear, £45 should be accounted for by Protexxion and £5 should be accounted for by WhyteGoods Limited, this is because the insurance contract is subject to the higher rate.

As such WhyteGoods will need to register for IPT purposes. It will be required to register within 30 days of when the intention formed that it would received taxable premiums and commissions.

Once registered, WhyteGoods will need to submit a IPT100 return which covers 3 months. The due date for this is the last day of the month following the end of the period.

For the policy which WhyteGoods takes out in his own name, this would be subject to IPT at the standard rate (12%) as this is simply business / corporate cover of a business resident in the UK.

WhyteGoods has no obligation to account for the IPT under this agreement. The responsibility is with Protexxion.

Maintenance programmes

The maintenance programmes are not contracts for insurance, as there is no insurable interest per say, rather this is just a contract which enables the goods to be checked, like a service contract.

As such, IPT is not due on the payments received by the loyalty scheme customers.

If cover is obtained by WhyteGoods obtains any cover for a shortfall of any repairas, this will likely be a contract of insurance and IPT may be due.

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

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

Answer-to-Question-_4_

Per Schedule 9, Group 1, Item 1 the supply of food of a kind for human consumption is zero-rated subject to some exceptions, which brings the supply into the scope of the standard rate for VAT purposes.

High protein flapjack

Per the recent cases of DuelFuel and Morrisons,in relation to the Nakd bars the point around protein bars and whether these constituted confectionary or a cake for the purposes of the food zero-rating were considered at the courts.

As part of this, it was held that it is important to consider the sugar content of the products and how the products are marketing and stocked on the shelves.

In both cases it was held that the supplies were standard rated as similiar to confectionary.

Following these principles, it is noted that there is syrup in the flapjack, which contains a high-sugar content and will make the flapjack sweet. This is similiar to confectionary.

The labeling of the shop is important, as it is also relevant what the typical view of the customer would be. Whilst it is helf to be nutrition bar and for muscle recovery this alone is not sufficient enough to bring the product within the scope of the zero-rate.

It is likely that the bar would be stocked beside other confectionary and other bars in a shop and a typical customer is likely to view the bar in the same vein as a confectionary bar, but potentially a healthier option.

As such, it would appear as though Shop4Lyf has incorrectly treated its sales of the bars as zero-rated. As such, it will need to make a disclosure to HMRC - see below.

Turmeric shot

There has also been a recent case which considered whether tumeric shots, taken for their health benefits fell within the zero-rating. There was an argument that the supplies fell within the zero-rating as part of the override to the exceptions.

However, it was held that the tumeric shots were not drank for enjoyment of the taste, but rather quickly drank for the health benefits that come from these. As such, it was held that these were standard rated.

Based on the information provided, the turmeric shots sold by Shop4Lyf appear to be the same concept. The added fruit juice does not impact the VAT liability of the sales.

As such, Shop4Lyf has correctly treated the sales of its turmeric shots as standard rated. No error needs to be disclosed to HMRC in this regard.

Large marshmallows

In the recent innovative bites case, the court considered whether the supply of mega marshmallows falling within the standard rated food as confectionary or zero-rated.

There were multiple factors considered including how the product was marketing and how the product was consumed. Ultimately the court held that large marshmallows could be zero-rated as these are designed and marketing for roasting as part of smores and are not prepared sweeted to be consumed using fingers. It held that this differentiated the supply of normal marshmallows (which are standard rated as confectionary) from the supply of large marshmallows which are zero-rated.

Based on the information provided, it appears as though the marshmallows offered by Shop4Lyf are also marketed for roasting. As such, these should be zero-rated per the innovative bites case.

In terms of the sales made as part of a promotional pack, where the supplies on their own have different VAT liabilities these should generally be approptioned and VAT accounted for accordingly.

However, there is a specific linked supply concession which enables the linked supplies to follow the same VAT liability of the main element.

There are certain conditions which must be met, which are:

The minor article must not be at a seperate price

The cost of the article is no more than 20% of the total cost of the combined supply (excl. VAT)

The cost is no more than £1 (excl. VAT)

Based on the above, the costs of the marshmallows are £1.88 (£3.75 x 50%) and 20% of

this is £0.38.

The cost of the skewers are £0.15 which is less than 20% and £1. As such, the linked concession rules apply and the whole sale of the promotional packs are zero-rated.

Error

As such, the net error made by Shop4Lyf in the last 12 months is:

£196,950 / 6 = £32,825 underpaid output tax

£96,086 / 6 = £16,086 overpaid output tax.

The net error is £16,739.

Given the value of Shop4Lyf's average sales, this error can be included within the next VAT return as it is more than 1% of its box 6 figure but less than £50,000.

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

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

Answer-to-Question-_5_

Share purchase

For VAT purposes, a share sale is VAT exempt and therefore there will be no VAT incurred on the purchase of the shares at £5 million.

Stamp duty is payable at a rate of 0.05%, calculated on the consideration paid for the shares. As such, stamp duty will be £250,000. This is not recoverable and will be a cost to the business.

With a share purchase, all the history will follow the sale and therefore PlanAInsurance ('PAL') will inherit any VAT liabilities of Here2Assist.

As such, it is recommended that sufficient due diligence is undertaken to determine whether any such liabilities exisit and if so, a reduction in the sale price is agreed or sufficient warranties and indemnities are put in place as required.

It is likely that input tax will be incurred on the purchase of the shares, in line with case law established in this area, the VAT should be recoverable to the extend there is a direct link between the input tax incurred and taxable supplies made by the PAL and the group.

As it is intended that supplies will only be made to other members of the VAT group following the share sale, it is likely that any associated costs will be treated as general

overheads of the business and recoverable in line with the partail exemption recovery rate.

Business assets

It is quite possible that the purchase of the business assets would qualify as a VAT-free (i. e., outside the scope) transfer of going concern ('TOGC'). There are various conditions that need to be met in order for the purchase of business assets to be considered a TOGC, and where it is TOGC treatment is compulsory.

The conditions are as follows:

All assets will be sold as part of a going concern

The buyer must intend to use the assets to carry out a similiar type of business as the seller

Where the seller is a taxable person, the buyer must be or become a taxable person as a result of the transfer.

Where land / buildings are being transferred, if there is an option to tax in place by the seller, the buyer must opt to tax and notify HMRC by the relevant date.

Where only part of a business is being sold, it must be capable of separate operation.

There must not be series of consecutive transfers.

Based on the above conditions, it is likely that the purchase would qualify as a VAT free

transfer. As such, no VAT should be incurred by PAL on the purchase of the business assets.

In Intelligent Managed Services, the court considered whether a transaction can still be treated as a TOGC where the assets purchased will only be used to make intra-VAT group supplies.

Based on the information, this is likely to be the case as PAL will use the assets to make supplies to other entities in the VAT group.

It was held that provided the assets were going to be used to make supplies which would be used by other VAT group entities to make supplies outside the VAT group, the supply should still qualify as a TOGC. As such, the purchase by PAL will likely qualify.

There are however special rules where the purchase of a TOGC is made by a partial exempt VAT group. These are detailed in section 44 of the VAT Act 1994.

There is essentially a charge whereby capital assets bought as part of the TOGC will be treated as both supplied by PAL and then bought by PAL. The value of such charge will be open market value.

This will not apply where the capital asset is more than 3 years old or a CGS asset.

Based on these rules, a self-supply charge will not be due on the freehold property. Whilst it is less than 3 years old, it is a CGS asset for VAT purposes, as the commercial building is 'new', as it is less than 3 years old.

As such, VAT will have been charged at the standard rate bringing the property into the

scope of the CGS. Please see more on CGS below.

However, a self-supply charge will be due on the servers as these are i) not more than 3 years old and ii) not a CGS asset. Each server costs £20,000 excluding VAT. To be in the scope of CGS for computers the costs needs to be £50,000 excluding VAT.

The value of the self-supply charge will be the price paid by PAL, which is £120,000. As such, VAT should be accounted for by PAL on £24,000.

It is possible for the VAT charged to be recoverable as input tax provided there is a direct and immediate link between the purchase of the services and fully taxable supplies made by the Group. In the absence of this, at least 5% of the VAT should be recoverable as an overhead (£1,200). This would result in a net cost of £22,800.

Consideration must be given to whether the other assets need to be subject to a self-supply charge also.

Another key difference between the purchase of the shares and assets is that SDLT will be due on the freehold commercial property. SDLT is charged on the VAT inclusive value however as no VAT will be charged SDLT will be due on the value of the property of £600,000.

The property is non-residential and therefore non-residential rates will be used. As PAL is a UK resident company there is no 2% surcharge.

£150,000 @ 0% = £0

£250,000 - £150,001 @ 2% = £2,000

£600,000 - £250,001 @ 5% = £17,500

Total SDLT = £19,500.

SDLT is not recoverable and will be a cost to the business.

CGS

On the transfer of assets as TOGC, PAL would inherit the CGS adjustments made to date by Here2Assist and must continue these accordingly, monitoring usage of the CGS assets appropriately.

Based on the detail provided, this would be the freehold property.

Input tax

In line with the findings of the UBAF case, input tax on associated costs of the TOGC will be recoverable in line with the intended taxable activity of the purchased assets.

On the assumption PAL will use the assets aquired from Here2Assit for fully taxable purposes, input tax should be recoverable in full.

Recommendation

Based on the above analysis, it would be sensible to proceed with the purchse of the business assets.

Whilst there is a couple of administration points to consider, including the self-supply charges provided this is only due on the servers this and the SDLT charge should be less of a cost to the business that the stamp duty on shares.

This method also ensures that PAL is not inheriting all of the VAT history of Here2Assist which it may favour.

The CGS adjustments should also not create significant administration for PAL.

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

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

Answer-to-Question-_6_

SDLT

SDLT is charged on a land transaction, and is calculated on the consideration payable plus VAT (where charged).

As the land does not been developed and the barn is non-residential having not been used for 15 years, the non-residential rates will apply to the sale.

It does not matter that Ann intends to turn the land into a holiday home and letting accomodation.

Total consideration payable will be £426,000. As such, the SDLT will be as follows:

£150,000 @ 0% = £0

£100,000 @ 2% = £2,000

£176,000 @ 5% = £8,800

Total SDLT payable = £10,800.

The SDLT is not recoverable by Ann, and therefore will be a cost.

The SDLT return and payment must be made within 14 days from the relevant date, which is usually completion.

VAT

Ann will incur VAT on the cost of the land, and unless she registers for VAT there will be no mechanism to use whereby she can recover this.

The DIY housebuilders refund scheme is not avaliable to Ann as she intends on starting a holiday letting business with the land and the construction.

Per Schedule 9, Group 1, Item 1(e), the supplies of holiday accomodation will be standard rated for VAT purposes.

The intended income from the holiday letting business is £120,000 per year, which is more than the £90,000 VAT registration threshold. Therefore, at some point Ann will need to register for VAT.

However, it is possible for Ann to register early (i.e., before breaching the VAT registration obligation threshold) on a voluntarily or intending trader basis. This is likely to be beneifical for Ann given the expected VAT bearing costs she is likely to incur - see more below.

Once VAT registered, Ann would be able to recover the input tax incurred on the purchase of the land, subject to a restriction for the non-business use related to her own private holiday home. This restriction should be calculated on a fair and reasonable basis

and should be easily auditable by HMRC.

Once VAT registered, Ann must charge VAT at 20% on the supplies of its holiday letting accomodation.

Letting accomodation costs

In terms of the costs proposed by the architect, it is likely that some would benefit from the reduced-rating under Schedule 7A, Group 6.

Under this, the contractor labour and materials will benefit from the reduced rate. The VAT payable would be £10,000.

The kitchen units and bathroom units will be standard rated, as they are not being provided by the person converting the barn. This will the case for both the home and letting accomodation.

Architects fees cannot benefit from reduced rating. These are specific excluded.

Any VAT incurred should be recoverable as directly linked to a taxable business activity of holiday accomodation.

Retirement holiday home

This will constitue a dwelling for the purposes of the VAT zero-rating on construction, as it contains self-contained living accomodation, as such it is likely that the construction and labour will be zero-rated and no VAT should be due this.

If the architects fees are provided as part of a design and build contract, these will also benefit from zero-rating. However, where not the supplies will be subject to VAT at the standard rate.

As above the kitchen units, bathroom units cannot benefit from zero-rating as these are not provided by the person construction.

Any VAT incurred in relation to the retirement home will be irrecoverable as this will not be used by Ann for business purposes, rather her own person home.

Landowner

If Ann makes a sale of the freehold of the apartments, this will be a first grant of major interest and will benefit from the zero-rating.

However, if she chooses to lease the apartment instead rather than as a sale of as holiday accomodation the supply will be VAT exempt.

This would make Ann partially for VAT purposes, which may be unfavourable for her and create more administration considerations for her in terms of VAT recovery.