Tolley® Exam Training

CTA ADVANCED TECHNICAL

DOMESTIC INDIRECT

PRE REVISION QUESTION BANK

FA 2023 & F(No 2)A 2023

May and November 2024 Sittings

PQ624

Tolley® Tax intelligence from LexisNexis®

INTRODUCTION

This Advanced Technical Pre Revision Question Bank contains 27 exam standard questions all with answers updated to Finance Act 2023 and Finance (No 2) Act 2023. This question bank forms an important part of your preparation for the examination - question practice is the key to passing exams.

As you answer the questions you may refer to either a hard copy or on-screen version of the **CTA Tax Tables 2024** and your own personalised version of the approved online legislation.

Using this question bank

All the CTA Advanced Technical exams are **3.5 hours** in length.

We suggest you **allocate 2 minutes per mark** which allows for 10 minutes initial reading time.

10 mark question = 20 minutes
15 mark question = 30 minutes
20 mark question = 40 minutes

You should attempt each question as if you were in the real exam. Try to **avoid just reading the answers** to questions - it is all too easy to nod as you read the answer saying "yes I know that point, yes I understand that advice given" - the test is would you have actually put those points in your answer? You won't find this out unless you **type up the answers and we recommend you do this using the on-screen version of this QB**. Ensuring you type up "proper" answers also gives you a good idea of how long an exam standard answer will take you to produce.

Preparing your answers

Questions set on the Advanced Technical papers **do not require a specific format** of answer - all questions will require a direct answer (rather than a letter to a client or an email to the tax partner). Requirements will start with words like "Explain", "Discuss", "Compare" and "Calculate".

There may be scenarios where there is no single correct answer or where the answer is not definitive. You will be expected to **make recommendations** as to actions which should be taken by the subject of the question.

You are expected to produce **full and reasoned answers** sufficient to demonstrate your knowledge and application in order to gain the available marks. **Brief bullet points are unlikely to be sufficient.**

Key **presentation considerations** include spacing your answer out, cross referencing your workings and using subheadings and short paragraphs.

The CIOT do not award "presentation and higher skills" (PHS) marks on individual questions nor will they form part of the 100 marks available on a paper. Instead, when they carry out their normal review of a script that is just below a pass, **up to two bonus PHS marks per paper** can be awarded which could therefore boost a candidate from a fail to a pass.

When awarding these bonus marks, the CIOT have stated they will consider:

- The accuracy of spelling and grammar.
- Whether full sentences have been used where appropriate (in some cases appropriately detailed lists may be appropriate, for example setting out the conditions for a relief to apply).
- Whether answers flow well and are presented in a logical order.
- Whether conclusions have been reached where it is appropriate to expect a conclusion.

Reviewing your answers

It is essential to read through your answer when you have finished typing it (within the time allocated for that question). We thought it might be useful at this stage to pass on some tips about how to review your answers effectively – **before** you look at the model answer.

Remember the first thing the marker will do is read your answer through as a whole – what overall impression are you giving of your ability? A good question to ask yourself is would the reader pay money for your advice? Have you put the marker in a good mood as soon as they see your script or are they going to be dreading marking what you have handed in?

You may be able to make some small corrections at this review stage – you may find you have missed out a vital word such as “not” or you may at this stage think of another point or two to add while reading through your answer. This approach could increase your marks much more effectively than carrying on with the point you were making before you stopped to do this final review.

Reviewing the model answer

In the advanced technical papers, it is quite likely that there is no single right answer. The model answer is only one possible solution. You may well have included valid points which are not included in the model answer. Review critically both your answer and the model answer. Are there points in the model answer which you could have included in your answer to get extra marks? Are there points you have included which, with the benefit of hindsight, you should have left out?

CONTENTS

Note:

Where the questions used in this bank are a real CIOT past paper question we have included the marking guides and relevant examiners reports after the answer. However some of the past paper questions used here pre date the point when the CIOT started publishing their marking guides with their model answers and so such questions do not have marking guides available.

CTA EXAMINATIONS

2024

TAX TABLES

INCOME TAX - RATES AND THRESHOLDS

	2023/24	2022/23
Rates	%	%
Starting rate for savings income only	0	0
Basic rate for non-savings and savings income only	20	20
Higher rate for non-savings and savings income only	40	40
Additional and trust rate for non-savings and savings income	45	45
Dividend ordinary rate	8.75	8.75
Dividend upper rate	33.75	33.75
Dividend additional rate and trust rate for dividends	39.35	39.35
Thresholds	£	£
Savings income starting rate band	1 – 5,000	1 – 5,000
Basic rate band	1 – 37,700	1 – 37,700
Higher rate band	37,701 – 125,140	37,701– 150,000
Dividend allowance	1,000	2,000
Savings allowance		
– Taxpayer with basic rate income	1,000	1,000
– Taxpayer with higher rate income	500	500
– Taxpayer with additional rate income	Nil	Nil
Standard rate band for trusts	1,000	1,000
Scottish Tax Rates(1)	%	%
Starter rate	19	19
Scottish basic rate	20	20
Intermediate rate	21	21
Higher rate	42	41
Top rate	47	46
Scottish Tax Thresholds(1)	£	£
Starter rate	1 – 2,162	1 – 2,162
Scottish basic rate	2,163 – 13,118	2,163 – 13,118
Intermediate rate	13,119 – 31,092	13,119 – 31,092
Higher rate	31,093 – 125,140	31,093 – 150,000
Top rate	125,140+	150,000 +

INCOME TAX - RELIEFS

	2023/24	2022/23
	£	£
Personal allowance(2)	12,570	12,570
Married couple's allowance(3)	10,375	9,415
– Maximum income before abatement of relief - £1 for £2	34,600	31,400
– Minimum allowance	4,010	3,640
Transferable Tax allowance for married couples and civil partners(4)	1,260	1,260
Blind person's allowance	2,870	2,600
Enterprise investment scheme relief limit(5)	1,000,000	1,000,000
Venture capital trust relief limit	200,000	200,000
Seed enterprise investment scheme relief limit	200,000	100,000

Notes: (1) Scottish taxpayers pay Scottish income tax on non-savings income.

(2) The personal allowance of any individual with adjusted net income above £100,000 is reduced by £1 for every £2 of adjusted net income above the £100,000 limit.

(3) Only available where at least one partner was born before 6 April 1935. Relief restricted to 10%.

(4) The recipient must not be liable to tax above the basic rate. The recipient is eligible for a tax reduction of 20% of the transferred amount.

(5) The limit is £2 million, where over £1 million is invested in knowledge intensive companies.

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TAX TABLES

ISA limits	**2023/24**	**2022/23**
	£	£
Maximum subscription:		
'Adult' ISAs	20,000	20,000
Junior ISAs	9,000	9,000

Pension contributions

	Annual allowance[1]	**Minimum pension age**
	£	
2022/23	40,000	55
2023/24	60,000	55

Basic amount qualifying for tax relief	£3,600
Maximum tax-free lump sum	£268,275

Note: (1) The annual allowance is tapered by £1 for every £2 of adjusted income above £260,000 (FA 2022: £240,000) for individuals with threshold income above £200,000. It cannot be reduced below £10,000 (FA 2022: £4,000).

Employer Supported Childcare	**2023/24**	**2022/23**
Exemption – basic rate taxpayer[2]	£55 per week	£55 per week

Note: (2) For schemes joined on or after 6 April 2011 the exempt childcare amounts for higher and additional rate taxpayers (based on the employer's earning assessment only) are £28 and £25 respectively.

ITEPA mileage rates

Car or van[3]	First 10,000 business miles	45p
	Additional business miles	25p
Motorcycles		24p
Bicycles		20p
Passenger payments		5p

Note: (3) For NIC purposes, a rate of 45p applies irrespective of mileage.

INCOME TAX - BENEFITS

Car benefits – 2023/24

Emissions	**Electric range (miles)**	**Car benefit %[4]**	
0g/km	N/A	2%	
1-50g/km	>130	2%	
1-50g/km	70-129	5%	
1-50g/km	40-69	8%	
1-50g/km	30-39	12%	
1-50g/km	<30	14%	
51-54g/km		15%	
55-59g/km		16%	
60-64g/km		17%	
65-69g/km		18%	
70-74g/km		19%	
75g/km or more		20%	+ 1% for every additional whole 5g/km above 75g/km
160g/km or more		37%	

Note: (4) 4% supplement for diesel cars excluding those that meet the Real Driving Emissions Step 2 (RDE2) standard (not to exceed maximum of 37%).

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Fuel benefit base figure	**2023/24**	**2022/23**
	£	£
	27,800	25,300

Van benefits	**2023/24**	**2022/23**
	£	£
No CO_2 emissions	Nil	Nil
CO_2 emissions > 0g/km	3,960	3,600
Fuel benefit for vans	757	688
Official rate of interest	2.25%	2%

INCOME TAX - CHARGES

Child benefit charge	**Withdrawal rate**
Adjusted net income >£50,000	1% of benefit per £100 of income between £50,000 and £60,000
Adjusted net income >£60,000	Full child benefit amount assessable in that tax year

CAPITAL ALLOWANCES

Annual investment allowance for plant and machinery (AIA)(1)	100%
WDA on plant and machinery in main pool(2)	18%
WDA on plant and machinery in special rate pool(3)	6%
WDA on patent rights and know-how	25%
WDA on structures and buildings (SBA) (4)	3%

Notes: (1) On first £1,000,000 of investment in plant & machinery (not cars) from 1 January 2019.
(2) The main pool rate applies to cars with CO_2 emissions of not more than 50g/km (prior to April 2021 not more than 110g/km).
(3) The special pool rate applies to cars with CO_2 emissions greater than 50g/km (prior to April 2021 greater than 110g/km).
(4) A 10% rate applies in respect of freeport tax site expenditure (until 30 September 2026) and on investment zone expenditure.

100% First year allowances (FYA) available to all businesses

Capital expenditure incurred by a person on research and development.
New zero-emission goods vehicles (until April 2025).
New cars which either emit 0 g/km of CO_2 (50g/km prior to April 2021) or are electric (until April 2025).
Electric vehicle charging points (until April 2025).

First year allowances (FYA) available to companies only

	Assets in main pool	Assets in special rate pool
Expenditure on new plant and machinery (other than cars) between 1 April 2023 and 31 March 2026 (5)	100%	50%
Expenditure on new plant and machinery (other than cars) in a freeport tax site (until 30 September 2026)	100%	100%
Expenditure on new plant and machinery (other than cars) in an investment zone	100%	100%

Notes: (5) 130% for expenditure between 1 April 2021 and 31 March 2023.

INCOME TAX - SIMPLIFICATION MEASURES

	2023/24	**2022/23**
	£	£
'Rent-a-room' limit	7,500	7,500
Property allowance/Trading allowance	1,000	1,000

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Flat Rate Expenses for Unincorporated Businesses

Motoring expenses	First 10,000 business miles		45p per mile
	Additional business miles		25p per mile
Business use of home	25 – 50 hours use		£10 per month
	51 – 100 hours use		£18 per month
	101+ hours use		£26 per month
Private use of business premises	No of persons living there:	1	£350 per month
		2	£500 per month
		3+	£650 per month

Cash Basis for Unincorporated Businesses

Turnover threshold to join scheme	£150,000
Turnover threshold to leave scheme	£300,000

NATIONAL INSURANCE CONTRIBUTIONS

Class 1 limits	**2023/24**			**2022/23**		
	Annual	**Monthly**	**Weekly**	**Annual**	**Monthly**	**Weekly**
Lower earnings limit (LEL)	£6,396	£533	£123	£6,396	£533	£123
Primary threshold (PT)	£12,570	£1,048	£242	£11,908	£1,048	£242
Secondary threshold (ST)	£9,100	£758	£175	£9,100	£758	£175
Upper earnings limit (UEL)	£50,270	£4,189	£967	£50,270	£4,189	£967
Upper secondary threshold for under 21 (UST)	£50,270	£4,189	£967	£50,270	£4,189	£967
Apprentice upper secondary threshold for under 25 (AUST)	£50,270	£4,189	£967	£50,270	£4,189	£967
Freeport upper secondary threshold (FUST)	£25,000	£2,083	£481	£25,000	£2,083	£481

Class 1 primary contribution rates		
Earnings between PT and UEL	12%	13.25%
Earnings above UEL	2%	3.25%
Class 1 secondary contribution rates		
Earnings above ST [(1)]	13.8%	15.05%

Note: (1) Rate of secondary NICs between the ST and the UST, AUST & FUST is 0%.

	2023/24	**2022/23**
Employment allowance		
Per year, per employer	£5,000	£5,000
Class 1A contributions	13.8%	15.05%
Class 1B contributions	13.8%	15.05%
Class 2 contributions		
Normal rate	£3.45 pw	£3.15 pw
Small profits threshold (SPL) [(2)]	£6,725	£6,725 pa
Lower profits limit (LPL) [(2)]	£12,570	£11,908

Note: (2) From 2022/23, Class 2 NICs are only payable where profits exceed the LPL. However, where profits are between the SPL and the LPL, there will be an entitlement to contributory benefits.

Class 3 contributions	£17.45	£15.85 pw
Class 4 contributions		
Annual lower profits limit (LPL)	£12,570	£11,908
Annual upper profits limit (UPL)	£50,270	£50,270
Percentage rate between LPL and UPL	9%	9.73%
Percentage rate above UPL	2%	2.73%

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TAX TABLES

OTHER PAYROLL INFORMATION

Statutory maternity/adoption pay		First 6 weeks @ 90% of AWE Next 33 weeks @ the lower of £172.48 and 90% of AWE
Statutory shared parental pay /paternity pay/parental bereavement pay		For each qualifying week, the lower of 90% of AWE and £172.48
Statutory sick pay		£109.40 per week
Student Loan	Plan 1:	9% of earnings exceeding £22,015 per year (£1,834.58 per month/ £423.36 per week)
	Plan 2:	9% of earnings exceeding £27,295 per year (£2,274.58 per month /£524.90 per week)
	Plan 4:	9% of earnings exceeding £27,660 per year (£2,305 per month /£531.92 per week)
Postgraduate Loan		6% of earnings exceeding £21,000 per year (£1,750 per month/£403.84 per week)

National living/minimum wage (April 2023 onwards)

Category of Worker	**Rate per hour**
	£
Workers aged 23 and over	10.42
21–22 year olds	10.18
18–20 year olds	7.49
16–17 year olds	5.28
Apprentices	5.28

Accommodation Offset £9.10 per day

HMRC INTEREST RATES (assumed)

Late payment interest	6.50%
Interest on underpaid corporation tax instalments	5.00%
Repayment interest	3.00%
Interest on overpaid corporation tax instalments	3.75%

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CAPITAL GAINS TAX

	2023/24	2022/23
Annual exempt amount for individuals	£6,000	£12,300

CGT rates for individuals, trusts and estates

Gains qualifying for business asset disposal[1]/investors' relief	10%	10%
Gains for individuals falling within remaining basic rate band[2]	10%	10%
Gains for individuals exceeding basic rate band and gains for trusts and estates[3]	20%	20%

Notes: (1) Formerly called entrepreneurs' relief
(2) The rate is 18% if the gain is in respect of a residential property
(3) The rate is 28% if the gain is in respect of a residential property

Business Asset Disposal relief	**2023/24**	**2022/23**
Relevant gains (lifetime maximum) [4]	£1 million	£1 million

Investors' relief		
Relevant gains (lifetime maximum)	£10 million	£10 million

Note: (4) For qualifying disposals made before 11 March 2020 the lifetime limit was £10 million.

Retail Prices Index

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1982	–	–	79.44	81.04	81.62	81.85	81.88	81.90	81.85	82.26	82.66	82.51
1983	82.61	82.97	83.12	84.28	84.64	84.84	85.30	85.68	86.06	86.36	86.67	86.89
1984	86.84	87.20	87.48	88.64	88.97	89.20	89.10	89.94	90.11	90.67	90.95	90.87
1985	91.20	91.94	92.80	94.78	95.21	95.41	95.23	95.49	95.44	95.59	95.92	96.05
1986	96.25	96.60	96.73	97.67	97.85	97.79	97.52	97.82	98.30	98.45	99.29	99.62
1987	100.0	100.4	100.6	101.8	101.9	101.9	101.8	102.1	102.4	102.9	103.4	103.3
1988	103.3	103.7	104.1	105.8	106.2	106.6	106.7	107.9	108.4	109.5	110.0	110.3
1989	111.0	111.8	112.3	114.3	115.0	115.4	115.5	115.8	116.6	117.5	118.5	118.8
1990	119.5	120.2	121.4	125.1	126.2	126.7	126.8	128.1	129.3	130.3	130.0	129.9
1991	130.2	130.9	131.4	133.1	133.5	134.1	133.8	134.1	134.6	135.1	135.6	135.7
1992	135.6	136.3	136.7	138.8	139.3	139.3	138.8	138.9	139.4	139.9	139.7	139.2
1993	137.9	138.8	139.3	140.6	141.1	141.0	140.7	141.3	141.9	141.8	141.6	141.9
1994	141.3	142.1	142.5	144.2	144.7	144.7	144.0	144.7	145.0	145.2	145.3	146.0
1995	146.0	146.9	147.5	149.0	149.6	149.8	149.1	149.9	150.6	149.8	149.8	150.7
1996	150.2	150.9	151.5	152.6	152.9	153.0	152.4	153.1	153.8	153.8	153.9	154.4
1997	154.4	155.0	155.4	156.3	156.9	157.5	157.5	158.5	159.3	159.5	159.6	160.0
1998	159.5	160.3	160.8	162.6	163.5	163.4	163.0	163.7	164.4	164.5	164.4	164.4
1999	163.4	163.7	164.1	165.2	165.6	165.6	165.1	165.5	166.2	166.5	166.7	167.3
2000	166.6	167.5	168.4	170.1	170.7	171.1	170.5	170.5	171.7	171.6	172.1	172.2
2001	171.1	172.0	172.2	173.1	174.2	174.4	173.3	174.0	174.6	174.3	173.6	173.4
2002	173.3	173.8	174.5	175.7	176.2	176.2	175.9	176.4	177.6	177.9	178.2	178.5
2003	178.4	179.3	179.9	181.2	181.5	181.3	181.3	181.6	182.5	182.6	182.7	183.5
2004	183.1	183.8	184.6	185.7	186.5	186.8	186.8	187.4	188.1	188.6	189.0	189.9
2005	188.9	189.6	190.5	191.6	192.0	192.2	192.2	192.6	193.1	193.3	193.6	194.1
2006	193.4	194.2	195.0	196.5	197.7	198.5	198.5	199.2	200.1	200.4	201.1	202.7
2007	201.6	203.1	204.4	205.4	206.2	207.3	206.1	207.3	208.0	208.9	209.7	210.9
2008	209.8	211.4	212.1	214.0	215.1	216.8	216.5	217.2	218.4	217.7	216.0	212.9
2009	210.1	211.4	211.3	211.5	212.8	213.4	213.4	214.4	215.3	216.0	216.6	218.0
2010	217.9	219.2	220.7	222.8	223.6	224.1	223.6	224.5	225.3	225.8	226.8	228.4
2011	229.0	231.3	232.5	234.4	235.2	235.2	234.7	236.1	237.9	238.0	238.5	239.4
2012	238.0	239.9	240.8	242.5	242.4	241.8	242.1	243.0	244.2	245.6	245.6	246.8
2013	245.8	247.6	248.7	249.5	250.0	249.7	249.7	251.0	251.9	251.9	252.1	253.4
2014	252.6	254.2	254.8	255.7	255.9	256.3	256.0	257.0	257.6	257.7	257.1	257.5
2015	255.4	256.7	257.1	258.0	258.5	258.9	258.6	259.8	259.6	259.5	259.8	260.6
2016	258.8	260.0	261.1	261.4	262.1	263.1	263.4	264.4	264.9	264.8	265.5	267.1
2017	265.5	268.4	269.3	270.6	271.7	272.3	272.9	274.7	275.1	275.3	275.8	278.1

CTA EXAMINATIONS

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TAX TABLES

Chartered Institute of Taxation.

Lease percentage table

Years	Percentage	Years	Percentage	Years	Percentage	Years	Percentage
50+	100.000	37	93.497	24	79.622	11	50.038
49	99.657	36	92.761	23	78.055	10	46.695
48	99.289	35	91.981	22	76.399	9	43.154
47	98.902	34	91.156	21	74.635	8	39.399
46	98.490	33	90.280	20	72.770	7	35.414
45	98.059	32	89.354	19	70.791	6	31.195
44	97.595	31	88.371	18	68.697	5	26.722
43	97.107	30	87.330	17	66.470	4	21.983
42	96.593	29	86.226	16	64.116	3	16.959
41	96.041	28	85.053	15	61.617	2	11.629
40	95.457	27	83.816	14	58.971	1	5.983
39	94.842	26	82.496	13	56.167	0	0.000
38	94.189	25	81.100	12	53.191		

CORPORATION TAX

Financial year	**2023**	**2022**
Main rate	25%	19%
Standard small profits rate	19%	N/A
Augmented profit limit for standard small profits rate	£50,000	N/A
Augmented profit limit for marginal relief	£250,000	N/A
Standard marginal relief fraction	3/200	N/A
Marginal rate	26.5%	N/A
Patent rate	10%	10%

EU definition of small and medium sized enterprises

	Small [2]	Medium [2]	Extended definition for R&D expenditure
Employees[1]	< 50	< 250	<500
Turnover[1]	≤ €10m	≤ €50m	≤ €100m
Balance sheet assets[1]	≤ €10m	≤ €43m	≤ €86m

Notes: (1) Must meet employees criteria and either turnover or balance sheet assets criteria.
(2) Thresholds apply for transfer pricing and distributions received by small companies.

Research and development expenditure

Financial year	**2023**	**2022**
Total relief for Small & medium enterprises (SMEs)	186%	230%
R&D tax credit for SME losses	10%	14.5%
Large companies – RDEC	20%	13%

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TAX TABLES

VALUE ADDED TAX

	Standard rate	VAT fraction
Rate	20%	1/6

Limits

	£
Annual registration limit	85,000
De-registration limit	83,000

Thresholds	**Cash accounting**	**Annual accounting**
	£	£
Turnover threshold to join scheme	1,350,000	1,350,000
Turnover threshold to leave scheme	1,600,000	1,600,000

ADVISORY FUEL RATES (as at 1 March 2023)

Engine size	**Petrol**	**LPG**	**Engine size**	**Diesel**
1400cc or less	13p	10p	1600cc or less	13p
1401cc to 2000cc	15p	11p	1601cc to 2000cc	15p
Over 2000cc	23p	17p	Over 2000cc	20p

Electricity rate 9p

OTHER INDIRECT TAXES

	2023/24	**2022/23**
Insurance premium tax(1)		
Standard rate	12%	12%
Higher rate	20%	20%

Tobacco products duty	**From 15.03.2023**	**From 27.10.2021**
Cigarettes	16.5% x retail price + £294.72 per thousand cigarettes (or £393.45 per thousand cigarettes (2))	16.5% x retail price + £262.90 per thousand cigarettes (or £347.86 per thousand cigarettes (2))
Cigars	£367.61 per kg	£327.92 per kg
Hand-rolling tobacco	£351.03 per kg	£302.34 per kg
Other smoking/chewing tobacco	£161.62 per kg	£144.17 per kg
Tobacco for heating	£302.93 per kg	£270.22 per kg

Notes: (1) Premium is tax inclusive ($^{3}/_{28}$ for 12% rate and $^{1}/_{6}$ for 20% rate).
(2) The £393.45/£347.86 per thousand cigarettes is a minimum excise duty (if higher than the first calculation)

CTA EXAMINATIONS

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TAX TABLES

INHERITANCE TAX

Death rate	40%[3]	**Lifetime rate**	20%

Note: (3) 36% rate applies where 10% or more of the deceased person's net chargeable estate is left to charity.

Nil rate bands

6 April 1996 – 5 April 1997	£200,000	6 April 2003 – 5 April 2004	£255,000
6 April 1997 – 5 April 1998	£215,000	6 April 2004 – 5 April 2005	£263,000
6 April 1998 – 5 April 1999	£223,000	6 April 2005 – 5 April 2006	£275,000
6 April 1999 – 5 April 2000	£231,000	6 April 2006 – 5 April 2007	£285,000
6 April 2000 – 5 April 2001	£234,000	6 April 2007 – 5 April 2008	£300,000
6 April 2001 – 5 April 2002	£242,000	6 April 2008 – 5 April 2009	£312,000
6 April 2002 – 5 April 2003	£250,000	6 April 2009 – 5 April 2026	£325,000

Residence nil rate bands[4]

6 April 2017 – 5 April 2018	£100,000	6 April 2019 – 5 April 2020	£150,000
6 April 2018 – 5 April 2019	£125,000	6 April 2020 – 5 April 2026	£175,000

Note: (4) An additional nil rate band is available where a main residence is passed on death to a direct descendant. Tapered withdrawal for estates > £2million.

Taper relief

Death within 3 years of gift	Nil%
Between 3 and 4 years	20%
Between 4 and 5 years	40%
Between 5 and 6 years	60%
Between 6 and 7 years	80%

Quick Succession relief

Period between transfers less than one year	100%
Between 1 and 2 years	80%
Between 2 and 3 years	60%
Between 3 and 4 years	40%
Between 4 and 5 years	20%

Lifetime exemptions

Annual exemption		£3,000
Small gifts		£250
Wedding gifts	Child	£5,000
	Grandchild or remoter issue or other party to marriage	£2,500
	Other	£1,000

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

Residential property value	**From 1.4.23**	**From 1.4.22**
>£0.5m - ≤ 1m	£4,150	£3,800
> £1m - ≤ 2m	£8,450	£7,700
> £2m – ≤ 5m	£28,650	£26,050
> £5m – ≤ 10m	£67,050	£60,900
> £10m – ≤ 20m	£134,550	£122,250
> £20m	£269,450	£244,750

STAMP DUTY/SDRT

Stamp duty[1]	- On shares transferred by physical stock transfer form	0.5%
Stamp duty reserve tax[2]	- On agreements to transfer shares[2]	0.5%
	- On shares transferred to depositary receipt schemes	1.5%

Notes: (1) Does not apply to UK securities traded on a recognised growth market (eg AIM).
(2) Does not apply to units in UK unit trust schemes or shares in UK OEICS bought from fund managers.

CTA EXAMINATIONS

2024

TAX TABLES

STAMP DUTY LAND TAX

Qualifying purchases in a Freeport receive full SDLT relief

Stamp Duty Land Tax on purchase price / lease premium / transfer value – England & NI

Basic Rate %[3][4][5][6]	Residential[3][4][5][6]	Rate %	Non-Residential
0	£0 - £250,000	0	£0 - £150,000
5	£250,001 - £925,000	2	£150,001 - £250,000
10	£925,001 - £1,500,000	5	£250,001 +
12	£1,500,001+		

Notes: (3) The basic rates are increased by 3% (the 'higher rates') where the purchase is of an additional residential property for individuals. Companies and trusts pay the additional 3% on all purchases of residential properties, subject to Note 4 below.

(4) Companies (and certain other entities) pay 15% on purchases of residential property valued > £500,000 (subject to exceptions).

(5) First-time buyers purchasing a single dwelling as their only/main residence may benefit from a reduced rate. (This includes qualifying shared ownership properties.) SDLT will not be due on properties up to £425,000. For homes between £425,000 and £625,000, SDLT will be payable at 5% on the amount above the £425,000 threshold. Homes bought for more than £625,000 will incur the rates as per column 1 in above table.

(6) Non-resident individuals and companies will pay an additional 2% surcharge for purchases of residential property. This is in addition to the basic rate, the higher rate (where applicable, in Note 3), and the 15% rate (where applicable, in Note 4).

New leases – Stamp Duty Land Tax on lease rentals – England & NI

Rate (%)	Net present value of rent	
	Residential	**Non-residential**
0	Up to £250,000	Up to £150,000
1	Excess over £250,000	£150,001-£5m
2	N/A	Over £5m

Land and Buildings Transaction Tax (LBTT) on purchase price – Scotland

Basic Rate %[1][2][3]	Residential	Rate %[1]	Non-Residential
0	up to £145,000	0	£0 - £150,000
2	£145,001 - £250,000	1	£150,001 - £250,000
5	£250,001 - £325,000	5	£250,001 +
10	£325,001 - £750,000		
12	£750,001 +		

Notes: (1) Rates are charged on the portion of consideration that falls in each band. The same tax is payable for a premium granted for a land transaction, except for residential leases which are generally exempt. Special rules apply to a premium for non-residential property where the rent exceeds £1,000 a year.

(2) The 'Additional Dwelling Supplement' of 6% of the relevant consideration applies broadly to purchases of an additional dwelling by individuals & trusts (over which the beneficiary has substantial rights) & to purchases of a dwelling by certain businesses, companies & other trusts.

(3) There is a relief for first-time buyers where a 0% rate is applied to the first £175,000 of the purchase consideration.

New leases – Land and Buildings Transaction Tax (LBTT) on lease rentals - Scotland

Rate (%)	Net present value of rent[4]
	Non-residential
Zero	Up to £150,000
1%	£150,001 to £2,000,000
2%	£2,000,001+

Note: (4) Residential leases are generally exempt

VAT QUESTIONS

1. Sunnyview Homes Ltd is a property development company.

There are three companies in the group, Sunnyview Homes Ltd (SH), Sunnyview Builders Ltd (SB) and Sunnyview Rentals Ltd (SR). When they have developed previous holiday sites, SH has bought the land, SB has built properties for SH, and SH has then sold them either to private customers or to SR for renting out. SR also manages properties for private customers who want to rent them out while they aren't using them. The companies are all separately registered for VAT.

The group is considering a different format for the development at Barrington View Lake. Although the specification of the properties is almost exactly the same as it would be for a family house, the local authority has issued the usual planning consent for a holiday home development, prohibiting occupation of the properties during February in each year. The group wonder whether that really makes any difference because the local authority never checks on it, and in some of its sites do have people who live in the properties year-round as their main residence.

SH has bought the site, as usual, but the group is thinking of selling off individual plots to purchasers rather than building the house first. The purchasers will have the benefit of the same planning permission, so they will be able to build a house that they aren't allowed to live in year-round (although they also might find that no-one checks). SH didn't pay VAT on the purchase of the land and hasn't opted to tax the site.

Once they've sold 60% of the plots, they'll take a view on whether it's then better to build on the remainder themselves in accordance with their normal format, or whether to carry on selling the land separately.

Purchasers of a plot will be able to use SB to build their holiday home or use a different builder if they want to. SB will be able to give people a good deal, because they are on site and therefore benefit from economies of scale, but SH expects a few people will use their own preferred firms. SH offers design-and-build. Customers will also be able to use SR or a different management company to manage the property later – although SR will be best placed to provide the service.

Typically, a customer will pay about £300,000 all in for an 80-year lease of one of the newly-built holiday homes, including the land (with a small ground rent each year after that, as well as a service charge). SH expects that the plots will go for about £100,000 each (similar 80-year lease); SB will charge something like £170,000 excluding VAT for designing, building and fitting the property out to the same specification. Where people use their own builders, they can pay them what they want.

SH wants understanding of the different VAT treatments of the different ways in which their customers can end up with a holiday home – or home they can live in for 11 months in a year – depending on which format for the project they adopt. SH believes that if they buy the plot and get it built themselves, they may even be able to claim back VAT on any fittings they buy to incorporate into the building.

Requirement:

Explain the VAT and SDLT issues arising from the different arrangements set out above. (15)

2. It is November 2024.

Mr Jay is a professional trustee, working mainly for defined benefit pension funds. His appointments are on a continuing basis and he issues VAT invoices to the pension fund trustees at the end of each month. He sub-lets a part of his office to an insurance broker and has not opted to tax the property. His annual VAT exclusive turnover for his trusteeship business is £90,000 and he receives annual rents of £16,000. He has been registered for VAT for a number of years and has a good compliance record. He does not have any special partial exemption method but has however recently heard that HMRC allow small businesses to operate special VAT accounting schemes and wants to know if any of these schemes would be suitable for his business.

Details for his VAT account for the quarter ended 30 September 2024 are set out below:

	£		£
Invoiced sales	22,000	Plus	4,400 VAT
Debtors at 30 September in respect of above sales	11,000	Plus	2,200 VAT
Payments received in respect of invoices issued in previous VAT quarter	9,000	Plus	1,800 VAT
Rent received 23 September	4,000		
Overhead expenses used in both businesses	5,500	Plus	1,100 VAT
Creditors in respect of above overhead expenses	1,200	Plus	240.00 VAT
Heat, light etc for office, including sub-let area (these invoices have been paid)	750	Plus	37.50 VAT

In August he bought new computer equipment on hire-purchase for use in both parts of his business at a cost of £1,600 plus £320 VAT.

One of Mr Jay's clients is the Trustees of A plc Pension Plan. The employer that set up the Plan, A plc, has recently gone into liquidation and Mr Jay is now the sole independent trustee. Mr Jay has also asked if there is now any way to reclaim VAT on actuarial and audit costs relating to the Plan.

Requirements:

Advise:

1) As to whether it would be beneficial to use a special VAT accounting scheme. Illustrate your answer with appropriate calculations of the liability for the above quarter on the assumption that any scheme was already being used;

2) Of any other ways in which Mr Jay could operate his VAT accounting more efficiently, and;

3) Whether VAT incurred on actuarial and audit costs relating to the A plc Pension Plan may be reclaimed.

Total (20)

3. It is November 2024.

Mr Cream left his employment in December 2023 to set up his own business as a computer and IT consultant. He commenced trading in January, the following year, through a limited company, Cream Computers Ltd, of which he is the sole director. Mr Cream has provided you with the following financial information about the company:

The company's turnover in the period January to November 2024 was as follows:

	£		£
January	9,824	July	20,025
February	9,971	August	8,556
March	10,013	September	14,920
April	11,675	October	15,462
May	12,279	November (estimated)	15,025
June	13,967		

In the same period, the company incurred VAT on computer consumables as follows:

	£		£
January	242	July	348
February	253	August	137
March	248	September	361
April	349	October	359
May	356	November (estimated)	360
June	358		

The company purchases computer consumables as required and carries no stock of these. Mr Cream instructed an accountancy practice to prepare a business plan for the company and the invoice for this was issued in December 2023 in the sum of £200 plus £40 VAT. Mr Cream was subsequently reimbursed by the company. The company purchased a computer in January 2024 for £2,000 plus £400 VAT for use in the consultancy business. The company has proper tax invoices for the computer consumables, business plan (although this invoice is addressed to Mr Cream) and the computer purchase.

Mr Cream advised HMRC in January 2024 that the company had commenced trading but has not registered for VAT, believing that this will be dealt with at the end of the first year's trading.

The company works mainly for private individuals and small businesses, which pay on completion of the work. A couple of larger clients have requested VAT invoices. The company has therefore issued two invoices in August showing VAT amounts of £200 and £300, although these do not show any VAT number. The company intends to pay this VAT to HMRC once the company's VAT position is settled.

One of these customers has advised Mr Cream that the company's procedures in relation to VAT are incorrect and Mr Cream wants to check the company's VAT position.

Requirements:

1) State the company's effective date of VAT registration and calculate the estimated net VAT due to 30 November 2024. (5)

2) Calculate (with supporting notes) the estimated amount of any potential penalties in relation to the failure to register for VAT and the issue of the invoices on the assumption that the company notifies HMRC of its liability to register at the end of November 2024. (10)

Total (15)

4. It is November 2024.

Messrs Blue, Black and Brown are individual investors. In January 2024 they decided to bid for a company, Green Holdings Ltd and its three subsidiary companies which operate in the renewable energy sector. They engaged a private equity firm, PEH LLP to assist with the acquisition and instructed solicitors and accountants to advise them jointly.

The acquisition was structured by the formation of a new company, BBB Holdings Ltd to acquire the share capital of Green Holdings Ltd, which in turn holds the entire share capital of the subsidiary companies. Green Holdings Ltd and its subsidiaries are all members of a fully taxable VAT group registration with Green Holdings Ltd as the representative member. The engagement letters with the solicitors and accountants were issued jointly to the three investors in their role as directors of BBB Holdings Ltd and the private equity house. Some bank funding was also obtained and BBB Holdings Ltd agreed to pay the legal costs of the bank which had independently instructed its own solicitors.

The acquisition was completed in May 2024. Immediately on completion, BBB Holdings became a member of the existing Green Holdings Ltd VAT group. Tax invoices from the professional advisers were issued shortly after BBB Holdings Ltd had joined the Green Holdings VAT group. The bank's solicitors addressed their invoices to the bank.

Initially no claim to deduction of input tax was made on these invoices and the amounts were included as a gross cost in the share premium account. Mr Blue, who is a solicitor, has suggested VAT may be recoverable on the invoices.

Requirement:

Advise as to whether VAT recovery is available and how the investors should proceed. You should make reference to relevant case law. (20)

5. Walrus Ltd is a VAT registered business preparing calendar quarterly returns, and the following is an extract from a letter from HMRC following a recent visit.

> "Following my recent visit to inspect your business records, I write to set out my views on certain matters where I believe the VAT treatment applied may require correction.
>
> Ming Ltd
>
> The first is the purchase of the insurance business from Ming Ltd in 2020 on which you were charged £150,000 VAT. You explained that you purchased the staff, brand name and client book and continued the business identically as it had run previously under Ming Ltd, charging insurance companies for referring new retail clients to them via website click-through advertising. Because you are charging VAT on your introductory fees you have claimed all of the VAT back on the acquisition.
>
> I am unable to agree with this. Firstly, and fundamentally, the VAT should not have been charged as this was a transfer of a business between two VAT-registered entities. In this circumstance it cannot be claimed back.
>
> Even if this were properly charged VAT, the services you supply in introducing insurance business are VAT exempt and any input VAT would therefore not be recoverable under partial exemption principles.
>
> Gordon Ltd
>
> The second item I think is incorrect is your claim for £400,000 input tax on the purchase of a tenanted commercial property, the Mercury Building, which you purchased from Gordon Ltd in April 2022. The property was six years old when you purchased it and had undergone a £300,000 plus VAT refurbishment three years prior to your purchase. The tenants have always been charged VAT and you opted to tax the property before the purchase went through. Since April 2022, due to a tenant leaving, you have occupied one of the four floors yourself, running the insurance introduction business from there.
>
> Again, this should not have been subject to VAT as it constituted the transfer of a property rental business. You have also failed to make capital goods scheme adjustments to reflect your exempt use of the property and were not able to provide me with the relevant records which you are required to maintain.
>
> Please consider my points above and let me have your response (in case I have misunderstood any of the circumstances) and your capital goods scheme calculations in relation to the Mercury Building so that I can raise an assessment."

The managing director of Walrus Ltd is aware of the penalty and interest implications but wants to know whether the officer is correct, what the capital goods scheme is and how it affects Walrus Ltd. He is confused as to how the officer can argue that no VAT was due on the Mercury Building purchase, yet adjustments need to be made. He also strongly suspects that the refurbishment may have been stripped out before he bought the building.

Requirement:

Advise on the VAT issues relating to Walrus Ltd's concerns. (20)

Do NOT discuss interest or penalty issues.

6. The following information is relevant to two entities:

Charity A

They have made purchases that were not used solely for business purposes and therefore, they have not treated all the related input tax as recoverable since it is not "input tax". The charity purchased a computer for £60,000 in May 2023 which they use for their fully taxable retail shop business as well as for non-business purposes.

Individual B

Individual B is a fully taxable trader and paid £100,000 plus VAT for construction work in November 2023 on an extension to the property where she resides and has her office. The extension is used partly as an office and partly for residential purposes and is almost the same size again as the original property. She has not recovered all the VAT.

Both entities think they can now recover all of this VAT back under EU case-law principles that continue to apply in the UK.

Requirement:

Explain whether the VAT is recoverable for the above entities. (10)

7. It is May 2024.

The chief accountant of Xessus Ltd has provided the following details of sales ledger issues to obtain advice about the correct VAT treatment in the VAT return for the quarter to 30 April 2024.

1) An invoice was raised to Durdum Ltd on 30 April 2018 for £100,000 plus VAT. This represented a fee in respect of work done on the design of a new component for one of Durdum's manufactured products. The customer disputed the quality of the work done and refused to pay. Xessus Ltd maintained that the debt was due and has never claimed bad debt relief in respect of it. On 16 March 2024 an agreement was reached to settle the dispute by Xessus Ltd issuing a credit note for £50,000 plus VAT and Durdum Ltd paying the balance.

2) An invoice was raised to Nampech Ltd on 6 July 2019 for £200,000 plus VAT in respect of consultancy work. The customer was an associated business (although not a member of a VAT group). Nampech Ltd was in financial difficulties, and Xessus Ltd did not pursue the debt because of the connection between the companies. On 25 April 2024 the directors of Xessus Ltd decided finally to write the debt off as it has become apparent that it will not be paid. No bad debt relief has ever been claimed in respect of this debt.

3) An invoice was raised to Madstop Ltd on 10 December 2020 for £60,000 plus VAT in respect of a supply of staff. Madstop Ltd was also in financial difficulties and failed to pay, so Xessus Ltd claimed bad debt relief in the quarter to 31 July 2021. On 15 February 2024, Madstop Ltd paid £40,000, and the company's chief accountant has promised that the balance will be paid in the near future.

4) Anessam Ltd has informed Xessus Ltd that it has gone into administration and is unlikely to make any further payment of debts. The following invoices have been issued to the company in 2023:

Date	VAT rate	Net	VAT
		£	£
10 July	Standard	40,000	8,000
16 August	Zero	60,000	Nil
18 September	Standard	50,000	10,000
31 December	Standard	100,000	20,000

Anessam Ltd sent a cheque for £40,000 on 10 October 2023, stating that this was intended to be put towards the August invoice. No other payments have been received, and it has been decided to write off the whole outstanding balance.

The normal terms of trade state that invoices are payable within 30 days.

The company has an annual turnover of £15 million.

Requirement:

Explain, with supporting calculations, the correct VAT treatment of each of the above matters, assuming that Xessus Ltd wishes to claim any available relief as early as possible, setting out how any relief is claimed. (15)

8. Bill Smith has recently been appointed as the tax manager of the Blue group of companies. The group comprises a holding company, Blue Holdings plc, a distribution company and two retail companies. The distribution company and retail companies are all separately registered for VAT and are fully taxable. The holding company is not VAT registered.

The group is now in the process of setting up a financial services operation to provide finance to customers of the retail companies. The financial services will be provided by a joint venture company, which will be 51% controlled by Blue Holdings plc with the other 49% held by a company with expertise in the financial services industry.

Since 2022 the group's strategy has been to employ all staff through Blue Holdings plc with a term in their contract requiring them to work for other group companies as required and the group wishes to maintain this policy. The payroll, tax, insurance and other employment issues are dealt with centrally by Blue Holdings plc with reimbursement of exact employment costs made by the other group companies. No administration charge is made. The total annual payroll is around £1,500,000.

Requirements:

1) Advise of any VAT exposure which Blue Holdings has in relation to these past arrangements; and

2) Advise on any alternative VAT efficient arrangements which the group could consider in the future in relation to provision of staff to the group companies, including the new financial services company.

(20)

9. BTSKY Ltd, operates in the telecoms sector. The company is negotiating with another UK company in the sector to buy wholesale SMS services with the intention of selling these SMS services wholesale to other telecoms companies. Whilst the majority of SMS services being acquired by BTSKY are for wholesale onward supply, BTSKY does have one customer that uses the SMS services within their corporate group.

The vendor has advised the company that under rules introduced a number of years ago, the purchaser must deal with the VAT formalities. The company wants confirmation of the correct VAT treatment. BTSKY Ltd, the vendor and the prospective purchasers are all registered for VAT.

Requirement:

Explain the background to the VAT rules introduced for this industry and confirm details of the correct VAT treatment. (10)

10. It is May 2024.

Red and Yellow Bricks Ltd is a property development company. It is registered for VAT and is partially exempt. It uses the partial exemption standard method and its taxable percentage for the year ended 31 March 2025 is expected to be around 70%.

The company has recently completed a development of 20 retail units. Three have been let. Lease agreements have been signed in relation to another 12 of the retail units but the tenants are not yet in occupation. The rest of the retail units are still available to let. An option to tax has been exercised over the properties. A sale of the entire development to an investment company in which Red and Yellow Bricks Ltd holds 51% of the shares has been agreed on terms which provide that Red and Yellow Bricks Ltd will guarantee the rents in relation to the vacant properties for a period of six months. Since the purchaser is connected with Red and Yellow Bricks Ltd, the development will be sold at a 10% discount to its market value and the sale price will be reduced to take account of rents paid in advance.

In 2023 the company purchased a piece of land with some disused buildings on it. The company incurred a substantial amount of professional fees on examining various environmental issues and opted to tax the site in order to recover these. It has also constructed a road through the site at a cost of £200,000 plus VAT. A housing association has made an offer to purchase the land with a view to building flats with a small shopping complex at the side.

Also, in 2023 the company purchased a commercial building for £1,500,000 plus VAT which it intended to develop. It opted to tax the property on acquisition in order to reclaim VAT on the purchase. However, a charity which provides food and clothing free of charge to homeless persons has now made an offer to buy the property. The charity intends to use the building for storage of the food and clothing prior to distribution. It will have a small office which will be used to administer the distribution process which will occupy about 5% of the property. The charity also intends to utilise an area at the rear of the property, which amounts to about 10% of the floor space, for fund-raising purposes by operating a cafeteria which will sell food and drink to the public at a commercial price.

The company is also building a new head office for its own occupation. It will purchase building materials but use in-house labour to carry out the work. A third party labour only quote was received for £140,000 plus VAT but this was regarded as too expensive.

Requirements:

1) Advise on the VAT implications of these projects for Red and Yellow Bricks Ltd.

2) Explain any Stamp Duty Land Tax implications for the purchaser.

(20)

11. It is May 2024.

Albert Ross runs a consultancy practice as a sole trader, turning over £100,000 a year in fees from UK commercial clients.

He is also a partner in his wife's business, although he does not have an active role. The firm makes and sells sweets and turns over £300,000 a year.

He is a partner in a Limited Liability Partnership (LLP) in which he has a 60% share, and his friend Chris Teddit holds the other 40%. The LLP is involved in property development and turns over a variable amount each year, usually at least £100,000.

He personally owns 100% of two companies, both UK incorporated and established:

1) Albatross Ltd, which is a pure holding company only, receiving dividends from its subsidiary;

2) Birdy Ltd, which is a manufacturing company as well as holding shares in other companies.

Albatross Ltd owns 100% of Speckleden Inc, an American incorporated trading company which has no presence in the UK.

Speckleden Inc owns 50% of Fishawk Inc, another American incorporated trading company which has a UK office.

Birdy Ltd owns:

1) 80% of the share capital of Eagle Ltd, a UK company whose only trading activities are exempt for VAT purposes. (The other 20% of the shares are held by an unconnected company.)

2) 50% of the share capital of Woodpecker Ltd, a UK company with taxable trading activities. (The other 50% are held by five unconnected individuals who own 10% each. The Articles provide that more than 50% is needed to remove a director or the board of directors and pass ordinary resolutions. No single shareholder has a casting vote.)

Finally, Eagle Ltd owns the 50% of Fishawk Inc that Speckleden Inc does not own.

At present, the nine business interests of Albert Ross have six separate UK VAT registrations. Mr Ross would like to bring as many as possible of his business interests within a single VAT registration.

Requirement:

Explain which of these businesses can be brought within a single VAT registration, with explanations of any conditions which may apply or any reasons why it may not be possible. (10)

12. It is November 2024. Strongwinds Ltd is an energy company which was incorporated by its holding company, Eastwinds plc in June 2022 to develop alternative energy sources (wind farms) at various sites around the United Kingdom. The company instructed an environmental consultancy to undertake a feasibility study in 2022 and since then has taken professional advice on the financial and legal aspects of the project. It has also instructed a PR agency to help it to develop and to present the project. These professional costs are as follows:

Date	Services	£
September 2022	Feasibility study	75,000 plus 15,000 VAT
December 2023	Financial advice	20,000 plus 4,000 VAT
June 2024	Legal advice	35,000 plus 7,000 VAT
October 2024	PR consultancy	30,000 plus 6,000 VAT

Eastwinds plc sub-lets two rooms in its headquarters office to Strongwinds Ltd. Under the terms of the lease it also charges Strongwinds Ltd a proportion of all office overheads based on the proportion of office space occupied and makes a separate charge of £20,000 per annum for telephone and computer usage. These amounts have not yet been invoiced to Strongwinds Ltd as it has been agreed that payment will be deferred until Strongwinds Ltd starts to generate some income.

Strongwinds Ltd is funded by equity investment from its parent company, Eastwinds plc and bank loans. In 2024 it was awarded some grant funding to develop the project, payable in two instalments of £500,000 each on 1 January 2024 and 1 January 2025. The funding has been made on the condition that it is used to purchase assets in connection with the development of green energy and is repayable out of the proceeds of any subsequent sale of the assets. Strongwinds must provide regular reports and accounts to the grant funders evidencing the use of the funding. The company has received no other income to date.

Strongwinds Ltd is now negotiating the freehold purchase of two sites and once planning permission is obtained, it will invite contractors to tender for carrying out the construction work. The company believes VAT will be payable on the purchase of the land and the contractors' services. The total development cost of each site is likely to exceed £1 million. The entire project is subject to planning permission and other regulatory approvals.

The earliest date any sales of power from the project will be made is February 2026. Neither company is presently registered for VAT. Eastwinds plc does not wish to register unless it has a legal requirement to do so and Strongwinds Ltd will register when it either has a legal requirement to do so or it is otherwise beneficial to do so.

If planning and related consents are obtained it is intended that the wind farm project will be sold once energy production has started, either by a disposal of Strongwinds Ltd or an asset sale. If planning permission is not obtained, the project will be abandoned, and the sites sold. The company solicitor, who works for both Eastwinds plc and Strongwinds Ltd, needs advice on the VAT implications of the development for both companies.

Requirements:

1) Advise on the liability to VAT registration of both Strongwinds Ltd and Eastwinds plc and the possibility of recovery of VAT on previous and future costs; and (10)

2) Advise on the VAT implications of the project being abandoned or the sale of Strongwinds Ltd or its assets. (5)

Total (15)

13. It is November 2024.

Will Jackson works for a company that has had a long-running dispute with HMRC.

With the encouragement of previous advisers, the company changed the treatment of some of its supplies from standard to zero-rated in January 2020. They put in a claim for repayment going back four years but HMRC refused it. HMRC told the company that they would raise assessments for later periods as they went along. When the company went to the Tribunal in March 2022 they won and HMRC had to pay the company all the money in the reclaim. By that time HMRC hadn't got around to raising any assessments for periods after January 2020.

The Court of Appeal didn't agree with the tribunal, and the company lost in March 2024 and ended up paying the January 2020 reclaim back to HMRC with interest. But HMRC still hadn't raised any assessments for periods after January 2020, or even asked the company for any more information since the Tribunal case.

On 28 September this year HMRC finally sent the company assessments for the quarters to March, June and September 2020. These were all based on extrapolation of the numbers the company were using for its reclaim in respect of periods up to January 2020. Will doesn't think they can do this. The balance of standard - and what the company thought was zero-rated - varied from period to period, and HMRC's extrapolation wouldn't produce the right figure. Will hasn't paid these assessments – and wrote to HMRC to query them (within 30 days) but hasn't heard back.

HMRC have asked for more detail about the December 2020 quarter. Will thinks this is a bit long after the event and doesn't think they should raise this.

Will wants to know what the position with the assessments are, and whether he has to provide the information requested and what would happen if he didn't. Coming up to Christmas and New Year is really busy in the company's accounts department, so it would be a big task to go back to look through old files. He also wants to know if the company does have to pay some VAT, will there be penalties or interest on top.

Requirement:

Advise in relation to the assessments and Will's queries above. (15)

14. It is May 2024.

The following two people have VAT issues:

Farmer Giles

1) Farmer Giles runs a farming business through a company which is registered for VAT. He has also been organising shooting parties (which hunt game birds such as pheasant and partridge) for some friends on an adjoining farm and has not reported this activity to HMRC.

2) 20 people are members of the Little Farmead Shooting Society (LFSS), including Farmer Giles.

3) LFSS has been in existence for four years. It is unincorporated and has no written constitution, but it has a bank account and a second-hand Land Rover which is used for the shooting parties. Farmer Giles himself prepares informal accounts which he circulates to the other members.

4) The members (including Giles himself) have paid a variable amount each year which covers the costs and usually leaves a small float in the bank account at the end of the year to be carried forward. The contributions are adjusted to reflect different numbers of days on which each member has taken part. The contribution in the first year was considerably higher in order to cover the cost of the Land Rover. In the last accounting year (to 31 December 2023) the average contribution per member was £4,000.

5) Currently the main annual expense is the shooting licence, which is made out to Farmer Giles himself and costs £30,000 plus VAT (charged by the owner of the adjoining farm).

Farmer Giles is concerned as to whether this activity should be reflected in the VAT returns of Farmer Giles' company, or else should be subject to a VAT registration in the name of Farmer Giles as a sole trader.

Sir Archie Fettrich

1) Sir Archie Fettrich owns a Scottish estate which is registered for VAT in his name as a sole trade. For some years Sir Archie has hunted deer on the estate as a hobby, but in 2023 he decided that the herds were getting too numerous, and it would make sense to cull them and sell the meat to butchers.

2) Because parts of the estate are remote, he bought a second-hand helicopter for £300,000 plus VAT in January 2023. He says that he has some private use of this, but according to the log 80% of the flying hours are related to hunting (mainly the recovery of carcases from inaccessible places). The VAT on the purchase was claimed in full as Input Tax in the VAT return for the period to March 2023. All running expenses incurred since then have also been claimed.

3) Sir Archie invites friends to take part in the hunting. They do not pay to do so, but they bring their own equipment: the only costs incurred by Sir Archie for the hunters are refreshments, which he does not charge through the business. In 2023 the estate sold 30 carcases to the local butcher for a total of £6,000. This has been treated in the records as a zero-rated sale, and all costs associated with the hunting activity (apart from refreshments) have been claimed as business costs. Sir Archie hopes to increase the sales in future years.

Sir Archie is concerned that HMRC may regard the hunting as merely an expansion of his former hobby, with the result that the expenditure on the helicopter should not have been claimed.

Requirement:

Advise on the VAT issues for Farmer Giles and Sir Archie. (15)

15. It is early May 2024.

Fresco plc is a medium-sized manufacturing business. The company prepares VAT returns for calendar quarters, and its recent record of payments has been:

Year	Month	£
2022	September	1,500,000
	December	1,300,000
2023	March	1,200,000
	June	1,000,000
	September	900,000
	December	800,000
2024	March	700,000

During the year to 31 March 2024, the company has been subject to the payments on account (POA) regime, with POA set at £200,000 based on the year to 30 September 2022.

The September 2023 return was filed late because the staff member concerned was on holiday. The company accepts that there was no reasonable excuse for this failure. The company has now discovered that the POA due on 31 March 2024 was not paid because the instruction to revise the payments going forward was misunderstood by the accounts department. They cancelled the existing bank instruction for £200,000 per month with immediate effect and failed to replace it with a new instruction. This was only noticed six days later, and the money was transferred to HMRC two days after that. The company is worried it might be subject to penalties.

Requirements:

1) Calculate the payments on account for the year to 31 March 2025, if no action is taken; and

2) Comment on the possibility of reducing the payment due on 31 May 2024; and

3) Comment on any potential penalties applicable to the September 2023 and March 2024 return.

Total (10)

16. It is May 2024.

Jane and Horace are married and in partnership farming 200 acres of land in the Cotswolds. The partnership owns three derelict stone barns which are no longer suitable for farming purposes and therefore the partnership proposes to convert them. They are not listed.

Haycroft Barn will be converted into a home and then gifted to Jane and Horace's daughter Lizzie (who does not work for the partnership); Windrush Barn will be converted to small workshops/offices for rental by the company to local small enterprises; and Burford Barn will be converted to provide accommodation rent free for a farm worker.

Work will commence in November 2024 and is scheduled for completion in September 2026. They will use the same builder who is flexible as to when the scheduled works are invoiced and paid. The following is an analysis of the builder's agreed costs and a schedule of his proposed invoices for the work done – the builder has advised all sums due will be subject to VAT at the standard rate:

Payment periods	Total payments	Haycroft Barn	Windrush Barn	Burford Barn
In 2024	£	£	£	£
November/ December	25,000	20,000	5,000	
In 2025				
three months to March	40,000	30,000	10,000	
three months to June	68,000	60,000	8,000	
three months to September	72,000	60,000	12,000	
three months to December	50,000	30,000	10,000	10,000
In 2026				
three months to March	20,000		20,000	
three months to June	15,000		15,000	
three months to September	22,000			22,000
	312,000	200,000	80,000	32,000
Projected VAT (at 20%)	62,400	40,000	16,000	6,400

Haycroft Barn is valued at £40,000 in its current state and as above the partnership will be spending £200,000, plus VAT in converting it. A charge to Jane and Horace's partnership capital accounts will be made to reflect the transfer of the asset out of the partnership.

On completion of the works for Windrush Barn, the partnership will let out the units to local small enterprises. The terms of the leases will not exceed five years and the annual rents will vary between £8,000 – £12,000 per annum. As the expected tenants are very unlikely to be VAT registered, the partnership does not wish to charge VAT on the rents. The first tenants will likely occupy the units in September 2026, with the rents receivable in the period to 31 March 2027 to be £30,000. The partnership would like to know if it can reclaim VAT incurred on these works.

The partnership's VAT returns to the four quarters to March 2024 showed:

VAT Quarter to:	Taxable supplies	Input tax claimed
	£	£
30 June	200,000	30,000
30 September	600,000	15,000
31 December	800,000	45,000
31 March	400,000	10,000
	2,000,000	100,000

It is unlikely that these figures will be materially different in 2024/25 to 2026/27. As the partnership has never made VAT exempt supplies, it has reclaimed in full all VAT incurred by it. Input tax claimed includes VAT charged on general overhead expenses – these have been of the order of £60,000 per annum (VAT £12,000) and are likely to be the same in the next two to three years.

The planning consent in relation to Burford Barn restricts its use to the provision of accommodation for a farm worker.

Until now, completion of the partnership's VAT returns has been straightforward. Since the partnership makes mainly zero rated supplies of food, it has reclaimed VAT in full on its costs. The partnership would like advice on the VAT and SDLT implications of what is being proposed.

Requirement:

Explain, with supporting calculations, the VAT and SDLT issues arising from the partnership's proposals. (20)

Assume, where relevant, the domestic reverse charge on construction services does not apply

17. It is May 2024.

AXcess is a registered charity whose principal objective is the provision of support services to young persons with learning difficulties and their carers.

It requires advice on the following matters:

1) AXcess has been asked by a Local Authority ("LA") to quote for the provision of a holiday scheme for children with learning difficulties. Under the scheme, every child aged five – 12 years with learning difficulties nominated by the LA will be offered during the Easter and summer holidays a three day non-residential break comprising two days' participation in activities such as arts and crafts, computer skills, sport, cooking and a day's excursion. The central objectives of the scheme are to help participating children to engage with others, and to give their carers a break.

2) AXcess has been asked by another charity to provide a series of "sibling days" which are aimed at providing an environment in which the siblings of children with learning difficulties and other disabilities meet with other siblings through participation in sport and other recreational activities. The objective is to provide support for siblings and to enable them to learn from the experience of others. Participating siblings will usually – but not always – be young persons. AXcess's client is not registered for VAT, so the draft contract provides for a VAT inclusive price.

3) In return for funding of £30,000, AXcess has agreed to assist a LA to develop a database which identifies within the county voluntary sector bodies dedicated to supplying support services to young persons with learning difficulties and their carers. Local residents will have free access to the database which will be operated under the auspices of the LA.

4) A LA which has a statutory obligation to provide dedicated teaching to children with special needs is anxious to outsource the delivery of these educational services. It is envisaged that LA staff, buildings and other assets will be transferred to the successful bidder, with it then supplying the services to the LA. AXcess is keen to bid for the contract, but the buildings need to be refurbished at a projected cost of £2 million, plus VAT. Unless some mechanism can be found which allows AXcess to reclaim VAT on the works, it cannot proceed with its bid.

Requirements:

1) Explain the likely VAT status of the services in 1) to 3) above; and

2) Advise on any options open to reclaim VAT on the necessary building works, to AXcess

(15)

Do NOT comment in detail on abuse of law except to highlight where it might be an issue.

18. The following is relevant to Ofcam Tutors Ltd:

1) Ofcam Tutors Ltd is not an "eligible body" as defined in VATA 1994, Sch 9, Group 6.

2) Having established the requirements of a student preparing for the GCSE and A-level examinations, the company will seek a suitable independent tutor to provide private tuition. A prospective student will be registered and on payment of £100, will receive two introductory tuition sessions, with a tutor introduced by the company to assess whether the match will be mutually beneficial. Payment for introductory tuition sessions is retained by Ofcam Tutors Ltd ie none is passed over to the tutor who makes no charge to the company for these sessions.

3) If the student and tutor agree to proceed with a program of private tuition, then the terms of business between the company and the tutor/student come into effect. Although there are two documents (one addressed to the student and one to the tutor), their terms essentially are identical; the differences between them reflecting the requirements of the person to whom they are addressed. Terms in the draft documents provide the following:

a) tuition sessions are described as "courses purchased through Ofcam". The company agrees to provide introductions to the respective parties and has the sole discretion to take on a student as a "client";

b) a tutor offers his/her services "as a self-employed tutor to Ofcam" and agrees to provide tuition "arranged by" the company;

c) a tutor is required to fulfil assignments using his/her own resources and is not obliged to take an assignment offered;

d) Ofcam Tutors Ltd agrees to arrange and administer assignments, to secure an acceptable tuition rate on behalf of a tutor and to collect fees due;

e) in return for its introductory and administrative services, Ofcam Tutors Ltd receives "commission". The commission represents an uplift of the agreed tuition fee payable to a tutor. The full amount of the fee is invoiced by the company in its own name. The quantum of Ofcam Tutors Ltd's commission is not disclosed in the documents, nor is it shown on its invoices; and

f) a tutor may not render invoices nor accept payment for an assignment but must invoice the company for his/her services. All sums received from students and payments made to tutors will go through the company's trading bank account.

Ofcam Tutors Ltd wants the documents to represent that it is acting as an intermediary in effecting introductions of suitable tutors to students.

Requirements:

1) Explain what it means to be acting as an intermediary.

2) Explain whether the terms in the draft document achieve the aims of Ofcam Tutors Ltd.

Total (15)

Refer to appropriate case law.

19. It is May 2024.

DWC Printers Ltd ("DWC") supplies printing and associated services. DWC has not claimed VAT bad debt relief on outstanding debts. DWC has identified the invoices on which relief may be claimed, but requires further guidance in relation to the following outstanding debts (the company's terms of business require that invoices be settled within 60 days):

1) There is £3,600 outstanding from a customer, Target Enterprises Ltd, made up as follows:

Invoice Ref	Date of invoice	Net	VAT	Gross
		£	£	£
130555	20/12/2022	2,000	400	2,400
	In 2023:			
140126	03/04	3,000	600	3,600
140137	09/04	4,000	Zero rated	4,000
140466	28/08	1,000	200	1,200
140467	28/08	500	Zero rated	500
150102	16/01/2024	2,500	500	3,000
		13,000	1,700	14,700
Payments by customer:				
19/10/23	Payment in settlement of invoice 140126			(3,600)
14/01/24	On account payment of outstanding balances			(7,500)
Outstanding				3,600

2) One of the company's customers, Arrow Holdings Ltd, was invoiced £2,400 inclusive of VAT on 20 February 2023. It maintains that VAT was incorrectly charged, and accordingly it paid £2,000 in full settlement. Realistically the balance is irrecoverable and has been written off as a bad debt.

3) There is an outstanding debt of £3,600 inclusive of VAT invoiced by DWC in January 2023 to a magazine publisher, Divine Homes, for the supply of annual binders for its magazines. DWC took out advertising space in the same publication at a cost to it of £1,200, inclusive of VAT. Divine Homes' invoice was dated 21 March 2023 and was payable on 20 April 2023. DWC reclaimed the VAT charged on Divine Homes' invoice on its March 2023 VAT return. DWC has not paid Divine Homes for the advertising space, preferring to wait for settlement of its invoice.

4) There are two long outstanding debts due to DWC from City Cycles Ltd which has since gone into liquidation:

   a) £2,400, inclusive of VAT invoiced on 21 October 2019; and

   b) £3,600, inclusive of VAT invoiced on 3 January 2020.

DWC accounted for VAT on the supplies which form part of the debts listed above. DWC's next VAT return due is the quarter to 30 June 2024.

DWC also has an SDLT question. It concerns the transfer of a residential property to a shareholder as a dividend in specie. It is unsure of the SDLT and VAT implications, if any, of the transfer. The shareholder is not a first-time buyer.

Requirements:

1) Quantify the bad debt relief due, providing explanatory notes, assuming that any claim will be made on the June 2024 return. (15)

2) Provide a brief summary of the SDLT and VAT issues for the residential property being transferred to a shareholder as a dividend in specie. (5)

Total (20)

20. It is May 2024.

Terry Williams has been acting as a financial consultant to an investment company, AW Investments Ltd which, until recently, was not registered for VAT.

In April 2023, AW Investments Ltd sold an investment property and applied the proceeds to acquire a brown field site in Birmingham at a cost of £3 million. It has secured planning consent to construct a mixture of commercial and residential properties on the site. It has been clearing and decontaminating the site, which was previously a foundry (the total cost to date is £350,000, net of VAT). It will not be until 2026 before the company is able to market the completed properties. The projected annual rents from the completed development are:

	£
Commercial properties (standard rated)	425,000
Student flats (VAT exempt)	225,000

Given that the projected cost of clearing and decontaminating the site, AW Investments Ltd opted to tax it. On this account, it sought and was granted VAT registration with effect from 1 April 2023, with its VAT accounting periods the normal calendar quarters.

In November 2023 the company acquired the trade and assets of an estate agency and property letting business. It was accepted that the transaction was a transfer of a business as a going concern. The acquisition costs were £120,000, net of VAT. One of the assets acquired was the business's Head Office in Birmingham. Its top floor has been refurbished/improved at a cost of £300,000 (net of VAT). On completion of the works, in January 2024 this part of the building was occupied by AW Investments Ltd's senior management team, with the estate agency and property letting business occupying the remainder of the property, save for the first floor which has been (and continues to be) sublet to an independent third party.

The company requires guidance on the application of the partial exemption rules to its situation. The company has not applied for a special partial exemption method.

The following details the income accruing from the various strands of AW Investments Ltd's business's activities and associated expenses in the year to 31 March 2024.

	VAT status of income	2023/24
		£
Estate agency and property letting business:		
Income		
Fees earned from agency services and property management – net of VAT	Standard Rated	1,500,000
Interest earned on client deposits	Exempt	18,000
Rent received from subletting of first floor of Head Office	Exempt	5,000
Expenses		
VAT bearing expenses relating to estate agency and property letting business, including interest earned and subletting (net of VAT)		(400,000)
Investment activities		
Gross proceeds from sale of investment property	Exempt	1,300,000
VAT bearing sale costs – net of VAT		(40,000)

Property activities: development	
Cost of site – exempt from VAT	3,000,000
Costs associated with acquisition of site (net of VAT)	(40,000)
Costs associated with clearance of site and decontamination (net of VAT)	(350,000)
Planning costs (net of VAT)	(50,000)
Management of combined business	
(VAT bearing costs not identified elsewhere)	
General overheads – net of VAT	(60,000)
Costs directly associated with acquisition of estate and property letting business (legal fees, tax advice and due diligence services, net of VAT)	(120,000)
Refurbishment/improvements to part of Head Office occupied by management of company (net of VAT)	(300,000)

Very soon the company will be required to complete the annual adjustment.

Requirements:

1) Compute the input tax that AW Investments Ltd may reclaim in the period to 31 March 2024. (10)

2) Provide notes in support of your calculations and with guidance on further action which should be taken by the company. (10)

Total (20)

21. It is May 2024.

Mrs Simms is the Group Finance Director of the Wembury Group of companies. The Wembury Group is a large group of manufacturing companies.

The following is an overview of the various pension schemes that the Wembury Group operates:

Defined Benefit ('DB') Scheme

The DB scheme is closed to new members. For existing members, Wembury Group makes payments into a fund, managed by Trustees separate to the Group. The purpose of the fund is to make investments and to generate a return on those investments thereby enabling Wembury Group to meet its obligations to pay pensions. Employees enrolled in this scheme will receive a pension based on their seniority and length of service with the Group.

At present, services relating to the management of the scheme's investments and the day-to-day management of the scheme (including providing reports and information to pensioners) are both supplied by FundCo plc, under an agreement with the scheme's trustees. FundCo plc charges VAT on its invoices. These invoices are jointly addressed to both Wembury Group and to the scheme's Trustees.

Defined Contribution ('DC') Scheme

All new employees of Wembury Group are entitled to join the DC scheme, a scheme vested with trustees separate from Wembury Group. Members of this scheme can elect, through salary sacrifice, to make additional payments into the scheme and Wembury Group will match these payments up to 10% of the individual's salary.

The value of the pensions received by employees in the DC scheme will depend upon the performance of the scheme's investments.

Services relating to this pension scheme are contracted for separately between the scheme and its suppliers. FundCo plc provides the trustees of the DC pension scheme with services relating to the management of the DC scheme's investments. However, pension scheme administration services are provided separately by Himalaya Ltd, under a contract for fund administration services. Additionally, recently the DC Scheme has engaged Global Law LLP to advise on an exercise relating to re-valuing employees' investments in the scheme.

FundCo plc, Himalaya Ltd and Global Law LLP are all businesses unrelated to the Wembury Group.

Requirement:

Advise on the VAT treatment of the services received, the scope of the parties to reclaim VAT, and how any such reclaim would be made.

Make reference to relevant case law and legislation. (15)

22. It is May 2024.

Dawlish Ltd provides construction services to third parties and also to Alphington Ltd, which operates a number of state regulated residential care homes. Dawlish Ltd's sole shareholder, Mr Redstone, also holds 70% of the shares of Alphington Ltd. Alphington Ltd is not VAT registered. Dawlish Ltd's newly appointed Finance Director, Mr Richards has provided the following on which he needs advice:

1) In the last few weeks Dawlish Ltd provided construction services to Alphington Ltd to build a separate building in the grounds of one of the existing care homes. The new building is additional residential accommodation consisting of bedrooms and bathrooms, but no kitchen facilities and it is not accessible from the main building. Dawlish Ltd did not charge VAT on the supply of the construction services. In order to complete the project on time, Dawlish Ltd subcontracted some of the plastering work to Painters' Plastering Ltd. VAT was not charged by Painters' Plastering Ltd on its invoice. Painters' Plastering Ltd are within the Construction Industry Scheme.

2) Dawlish Ltd has an on-going contract with Alphington Ltd for the supply of maintenance and construction services for all of its residential care home properties. In order to provide financial support to Alphington Ltd, Dawlish Ltd has agreed that it will only charge Alphington Ltd 65% of the costs incurred in relation to the repair and maintenance services. The contract has been in place for 20 months but Dawlish Ltd has issued no invoices and no payments have been made by Alphington Ltd. Dawlish Ltd has not accounted for VAT.

3) In addition to the above supplies to Alphington Ltd, Dawlish Ltd has been asked to quote for an extension at another care home, Old Folk Rock Ltd. The care home has had plans drawn up and the draft pricing is coming out at around £100,000 (net). The quote includes £30,000 (net) for the supply and fit of solar panels. Mr Richards is not sure what VAT rate to charge on the quote.

Requirement:

Advise on the VAT implications of the matters described and on any actions which Mr Richards should take. (15)

23. It is May 2024.

John Hobbs is the Finance Director of Warren Point Insurance Ltd ("Warren"), an insurance company providing insurance to UK motorists. Warren uses the special accounting scheme and has some issues with respect to IPT:

Meaning of premium and calculation of IPT

He wants confirmation on what is meant by 'premium' and how it is calculated. He has also recently noticed that although Warren has been charging IPT on the basis that a policyholder has a UK billing address, roughly 5% of its policies seem to relate to cars registered in the Isle of Man. He would like to know whether Warren has been correct in charging and accounting for IPT.

New insurance products

Warren has recently introduced a new UK motor insurance product aimed at individuals receiving the personal independence payment and is unsure of the IPT rate for this product.

In addition, the company is in the process of entering into an agreement with Carp's Cars Ltd. The products that Warren will offer to motorists are as follows:

1) A Mechanical Breakdown Insurance ('MBI') product; and

2) A repair and maintenance contract product.

In relation to the MBI product, Carp's Cars Ltd has suggested that an associated company of Warren - Lynton Sands Ltd - should manage the administration of the insurance and the distribution relationship with Carp's Cars Ltd. Of the total premium for each policy, £15 would be allocable to these services and payable to Lynton Sands Ltd.

Commissions paid to brokers

In order to sell motor insurance, Warren has agreements with a number of insurance brokers. In January 2024 Warren entered into an agreement with a broker under which Warren specified a minimum premium value, but which allows the broker to keep as commission the difference between the minimum premium and whatever value the broker can sell the insurance for.

Mid-term adjustments

Where the circumstances of a policyholder change (eg points for speeding) during the period that they are insured they are obliged to notify Warren. When this happens, the policyholder's premium will be recalculated, and this can result in an increase in the premium for the remainder of the period.

Current process

As part of the process of configuring a new system, Warren undertook a review of its current IPT accounting procedures and noted the following:

1) IPT is accounted for on the minimum value of premium that Warren agrees with its brokers.

2) IPT is accounted for based on the premium agreed with policyholders on the date the insurance contract is entered into and does not take into account subsequent adjustments.

Requirement:

Advise Warren Point Insurance Ltd in relation to its IPT issues. (15)

IPT QUESTIONS

24. Home Repairs Ltd is a company that specialises in repairing domestic appliances. It is offering an insurance policy to householders to insure their domestic appliances. The following details their activity in 2024.

The number of policies taken out in the following locations were:

20,000	Great Britain
10,000	Republic of Ireland
1,000	Isle of Man
1,000	Channel Islands
500	Scilly Isles

A fee of £100 was charged for each policy taken by a householder. A similar policy was sold to a hotel group with hotels in Great Britain and Republic of Ireland. There are 80 hotels in Great Britain and 20 in Republic of Ireland, though the cost of insurance in Republic of Ireland is 10% higher. A fee has been calculated of £20,000. In addition to this fee, Home Repairs Ltd charged the hotel group 8% interest per annum for accepting payments in instalments and this was charged separately at the year-end. Over the past year this interest was £730.

Home Repairs Ltd has an arrangement with a well-known kettle manufacturer, Black Pots Ltd, which offers its customers a free warranty for the first year of ownership. The customer is to return a card that is contained in the kettle's packaging to Home Repairs Ltd, which administers this warranty service for Black Pots Ltd for a fee of £10,000 a year. Black Pots Ltd tries to persuade its customers to purchase an extended warranty. Each purchaser is charged £10 for the extended warranty. Black Pots Ltd retains £1 of this for its administrative costs and pays the remaining £9 to Home Repairs Ltd. 750 policies have been sold. Any customer that has not taken up the extended warranty is sent a reminder by Home Repairs Ltd when the free warranty is about to expire to sell a similar extended policy for the kettle. The cost of this is £10, and Home Repairs Ltd keeps the whole fee. 1,200 of these policies have been sold.

Home Repairs Ltd is an authorised insurer and registered for IPT.

Requirement:

Calculate with full explanations the amount of IPT arising in respect of the above transactions. (10)

Do NOT comment on VAT or any other taxes.

25. MLU is a Belgian insurance company which has been providing insurance cover for plumbing and heating system emergencies to households across Europe for the last five years. The policies in the UK are arranged, sold and administered by an unconnected UK company, Thompson Ltd, a licensed insurance broker. Thompson Ltd sends out the marketing materials, deals with initial queries and collects and processes the applications from customers.

Claims handling is outsourced by MLU to another unconnected UK company, Wagg Ltd, which operates a hotline service, receiving calls from policy holders, arranging for engineers to attend the properties and settling complaints.

The marketing material points out to customers that customers will have a contract of insurance with MLU for which an insurance premium is payable as well as a separate contract for arranging and administering the insurance contract with Thompson Ltd for which a £15 administration fee is charged. It is emphasised that the overall price for the cover is not affected by this arrangement. No IPT is accounted for on the amounts retained by Thompson Ltd.

Thompson Ltd has recently begun to offer extended insurance warranties to customers who choose to pay for upgraded boilers when their old ones break down. They charge a £10 documentation fee for arranging the policy, pay 10% of the premium to the boiler supplier and the rest to MLU.

MLU accounts for standard rated IPT on all premium amounts it physically receives.

Requirement:

Explain the relevant issues for Insurance Premium Tax purposes. (10)

Quote statutory references and case law where appropriate.

26. The following scenarios relate to different companies and the IPT issues that they have:

1) Company X accounts for Insurance Premium Tax when they receive the money from their customers whereas company Y goes by the date they enter the premium details as due into their statutory records. What are the rules around this and, if it is right to use the date of entry into the records, what happens with bad debts and overpayments etc?

2) Company Z supplies double glazing to individuals, and they have been charging their customers a 'guarantee premium' of 10% of the value of the goods. This means that if the double glazing needs repairing or replacing in a 20-year period then company Z will make good the repair/replacement. The contractor separately takes out an insurance policy on behalf of the individual customer which allows that customer to claim for any repairs that are needed under the guarantee should the contractor go out of business prior to the end of the 20-year period. Is this 'guarantee premium' liable to IPT?

3) Company A only discloses errors to HMRC (HMRC) unless the net error is less than £10,000. Company B only discloses errors above £50,000. Which company is right? Would a disclosure for an £18,000 error be needed?

4) Company K is a UK insurer registered for Insurance Premium Tax. As a new business venture the company has started providing credit guarantees, essentially charging manufacturers a premium against their risk that a customer will not pay their credit instalments on purchases. Should this be subject to Insurance Premium Tax? Also, they employ a third party to administer their household emergencies insurance contracts for which the insured pays a set fee directly to Company K. Can you clarify the IPT treatment?

5) Company G has had to dismiss an employee for alleged fraud and is now concerned about an Insurance Premium Tax return for the second half of 2021 as they seem to have understated the liability deliberately. What criminal sanctions could apply here?

Requirement:

Answer the above queries providing statutory references where appropriate. (20)

27. An American based company, “Coversure Inc” is intending to sell travel insurance (amongst other things) via the internet to individuals around the world, including the UK. The company has not thought about becoming registered for IPT in the UK and believes it is not necessary to do so, as it is based in America.

It wants to know whether this is necessary and if so how it will go about becoming registered. The CEO doesn’t know much about the UK’s IPT regime as Coversure doesn’t have a place of business in the UK. The company is concerned as to how it will manage any UK IPT affairs, as well as what the company will be required to do if it is liable to register.

Requirement:

Explain the IPT issues arising from the above arrangements. (15)

VAT ANSWERS

1. SUNNYVIEW HOMES LTD

VAT ISSUES

Zero-rating of dwellings

The first grant by a person constructing a building designed as a dwelling of a major interest in the building is zero-rated under Sch.8 Group 5 Item 1 VATA 1994. This would cover a supply of a completed home by a developer such as SH:

- as long as a "major interest" is granted – this is the freehold or a lease exceeding 21 years in England & Wales, so an 80-year lease would qualify;
- as long as the building qualifies as a "dwelling" (see below).

The supply in the course of the construction of a building designed as a dwelling of any services related to the construction, such as the building services of SB, are zero-rated under Sch.8 Group 5 Item 2.

Holiday accommodation – grants of 80-year leases

The grant of an interest in a new building which constitutes holiday accommodation is excluded from exemption by Sch.9 Group 1 Item(1)(e) and notes 11 – 13 VATA 1994. This includes supplies of interests in new buildings which are excluded from zero-rating by Note 13 Group 5 Sch.8 VATA 1994.

This note provides that the grant of an interest in a building designed as a dwelling is not within item 1 if the interest granted is such that the grantee is not entitled to reside in the building (or part of it), throughout the year; or residence there throughout the year, or the use of the building or part as the grantee's principal private residence, is prevented by the terms of a covenant, statutory planning consent or similar permission.

However, following the case of *Ashworth* (VTD 12,924), a lease is not standard-rated as holiday accommodation if the property is actually occupied as a main residence and the property is not in a holiday park or a site held out as a holiday park. This exception needs confirming as to whether it could apply to any of the potential customers. The sale would be exempt rather than zero-rated, because the planning consent would breach the terms of Sch.8 Group 5 Note 13.

If the building is holiday accommodation, the standard "all-in" premium for the 80-year lease would include VAT at $^1/_6$: the supply would be £255,319 plus £51,064 VAT. The company will need to take this into account in calculating its required profit margins and therefore its pricing policy.

Significance of planning permission

The terms of the planning consent clearly mean that, in accordance with Note 13 Group 5, the properties will not be dwellings but will be treated as holiday accommodation. The fact that the planning authority and the residents may not take any notice of the terms of the consents does not make any difference. This point was tested in the case of *HMRC v Tallington Lakes Ltd*, Ch D 2007. This dealt with a caravan park but the point about planning permission was the same.

Note 13 applies only to supplies within Item 1 of Group 5 Sch.8 (ie the sale of a property or in this case the grant of the 80-year leases). The supply of construction services will still be zero-rated within Item 2, regardless of the terms of the planning consent, provided that the building is "designed as a dwelling" (which appears to be the case).

Tutorial Note:

Note that the definition of a dwelling is in Note 2 and a holiday home/furnished holiday let would fall within the conditions of (a) to (d) as there is no requirement in here that it must be available to be lived in all year round.

However, Note 13 clarifies that a dwelling for the purposes of item 1 only (sale/grant of lease over 21 years) does not include a holiday home/furnished holiday let where the person cannot live in it all year, or planning disallows it from being a person's principal private residence.

So the construction costs are zero rated but the onward sale/grant of the lease is not.

Separate sale of plot and services

If SH sells plots of land rather than completed houses, if no anti-avoidance argument is taken by HMRC:

- the plots of land appear to be standard-rated because they are excluded from exemption by Note 11(b) Group 1 Sch.9 VATA 1994;

- the construction services would be supplied directly by the builder, whether SB or another firm, and could be zero-rated. If the contract is "design and build", all costs included within the contract price would enjoy VAT recovery, including building materials and architects' fees (see note on "not building materials" below).

Possible abuse of rights argument

In the case of *Lower Mill Estate Ltd* (TC00016), HMRC attacked an arrangement whereby customers could buy plots of land and building services separately as an artificial way of avoiding the purpose of the law, which was that new buildings of this type should be standard-rated on the whole amount paid by the customer. The First-tier Tribunal accepted this argument. The taxpayer appealed and the Upper Tribunal held that there were two, separate supplies stating, "in our judgment, apart from any abuse or sham, it is not possible to combine supplies by two suppliers under two contracts so as to result in one supply for VAT purposes". The Upper Tribunal also held that the first limb of the two-part test for abuse was not met as, in the particular circumstances of the case, the tax advantage was not contrary to purpose. HMRC has stated in its guidance that it considers that this case to be specific on its facts and does not have wide ranging impact. Therefore, if HMRC considers that this arrangement has been implemented in order to avoid payment of VAT they will most likely seek to challenge it. However, the scheme is less likely to be artificial and abusive:

- if customers have a clear and free choice to use SB or another building firm, and this is not an apparent choice with no reality;

- the transactions of SB and SH are economically independent of each other, i.e. there is no cross-subsidy in respect of the prices.

DIY builders' scheme

Where someone buys a plot of land and has the property constructed, it will be possible for them to:

- receive the construction services zero-rated as described above;
- make a DIY builder's claim for VAT on materials under s.35 VATA 1994.

The conditions for the DIY claim broadly match those for zero-rating of new dwellings, but it has been held by the First-tier Tribunal that a DIY claim is permissible for someone building a holiday home, even if it is subject to the planning constraints described (*Susan Irene Jennings* (TC00362)). HMRC accepted in R&C Brief 29/2010 that this is the case, as long as the property is built for a non-business purpose. If the purchaser intends to rent the property out as an economic activity, then the DIY claim cannot be made (although it would be possible to register for VAT and recover some of the VAT charged as input tax).

VAT cannot be recovered under the DIY scheme on architects' fees, construction services which should have been zero-rated but were incorrectly charged by the builder, or items which are not building materials.

Building materials

"Building materials" means goods of a description ordinarily incorporated by builders in a building of that description but does not include finished or prefabricated furniture (other than furniture designed to be fitted in kitchens), electrical goods or carpets. Building materials can be incorporated in a zero-rated supply of a building or building services and are eligible for a DIY claim under s.35.

If goods are incorporated (in an onward zero-rated supply of that building) which are not building materials, the supplier cannot recover the VAT as input tax (SI 1992/3222 art.6). HMRC have published extensive guidance on what they regard as building materials, but there are still sometimes disputes in Tribunal about individual items. If the builder or customer proposes to include something unusual, it will be worth considering in advance what the VAT treatment is likely to be.

Tutorial Note:

Note that the block on input tax on building materials only applies if the onward supply of that building is zero rated. If it was exempt, then the input tax would not be recoverable under basic principles and if it was standard rated then they would have VAT charged on them anyway, so VAT recovery would be available.

Stamp duty land tax

Under the "standard format", the customers will pay a premium for a lease and will be liable for SDLT on the whole amount (including VAT). If the standard property costs £300,000, the SDLT will amount to £2,500 (this is assuming that they are not first-time buyers who will use this as their main residence). This will comprise the first £250,000 at 0% and the next £50,000 at 5%. If the purchaser already owns a residential property, then the rates are increased by 3%.

Under the revised format, it appears that the land element will fall below the threshold (£250,000), so there will be no SDLT on that. If the purchaser already owns a residence then 3% will be due by them. Services are not subject to SDLT, so the arrangement appears to avoid the charge to that tax altogether.

HMRC might try a parallel anti-avoidance argument to bring the whole amount paid by the customer within the charge to SDLT, but it would have to be on the basis of a "pre-ordained series of transactions with steps inserted only for a tax advantage". Such an attack seems less sustainable than the "abuse of rights" argument for VAT, as the arrangements do not appear to be pre-ordained.

Examiner's report:
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This was a tricky question which tested an area of the law that would be on the edges of most candidates' knowledge – the DIY builders' scheme. It was therefore pleasing to see that a majority of candidates were able to quote the case of Jennings and HMRC's subsequent change of view on how the DIY scheme operates in the case of a holiday home. Clearly many candidates are paying proper attention to recent* developments. *[*It was topical at the time the question was set.]*

Unfortunately, there was very little evidence that anyone understood the point of the Jennings decision. The distinction between Sch.8 Group 5 Items 1 and 2 is more central to the syllabus, and it was disappointing to see that no-one provided a convincing answer and very few scored any points on it.

In order to be sold zero-rated under Item 1, a building must be a "dwelling" as defined in the law. The planning consent is relevant to that. Accordingly, under the "normal" structure described in the question, the holiday homes cannot be sold to purchasers zero-rated. Many people realised that, but rather fewer realised that a holiday home is also excluded from exemption under Sch.9 Group 1. Perhaps a quarter of candidates realised that the sale of the new holiday homes would be compulsorily standard-rated, and the option to tax was wholly irrelevant.

What no-one appeared to realise (or state clearly) that the condition for zero-rating a supply of construction services under Item 2 is different. The building must be "designed as a dwelling". The builder only has to look at the plans, not at the planning permission. More than one candidate stated that the builder requires a certificate of use from the purchaser – that is only necessary if the building is to be put to a relevant charitable or residential use. That is the key issue in Jennings: it is possible for a DIY builder to buy in the services of a construction firm who will be able both to carry out the work ZR within Item 2, and to include building materials within that ZR supply using Item 4. The Tribunal therefore decided that there was no reason to deny a DIY claim on building materials bought directly by the DIY builder who was constructing a holiday home, because the purpose of the law is to make the two chains of supply broadly neutral.

A few candidates mentioned the case on which this question is loosely based, Lower Mill Estates. However, no-one mentioned the "abuse of rights" argument that succeeded for HMRC in that case. This was perhaps not surprising as so few candidates were able clearly to identify the difference in VAT treatment which would arise.

An important point on the DIY scheme that caused problems is that a DIY "new builder" can only recover VAT on the purchase of materials, not services. If the DIY builder uses a contractor to construct the dwelling, the VAT relief is given by getting the contractor to zero-rate the supply, not by making a s.35 claim.

There were easy marks for making very obvious points about SDLT which were missed.

2. MR JAY

1) VAT Special Schemes

Mr Jay is eligible to use the cash accounting scheme and also the flat-rate scheme for small businesses. The respective advantages and disadvantages of both of these schemes are set out below:

Cash Accounting

The cash accounting scheme requires Mr Jay to account for VAT on his invoices to his clients only when he receives payment. The scheme has therefore an automatic relief from VAT on bad debts. Against this, he can only reclaim input tax on his expenses when he has paid them.

There are also additional accounting requirements in that he needs to keep a record of payments made and received, cross-referenced to invoices, for example through a cash book. When payment is received in cash, he will, if required, have to endorse his own invoices when paid and have his own expense invoices similarly endorsed if he settles them by cash.

Applying the cash accounting principles to his VAT account for the quarter ended 30 September 2024, the cash accounting scheme would produce a small cash flow benefit (see example 2 in the Appendix).

Flat-rate scheme

Mr Jay could also use the flat-rate accounting scheme for small businesses. This scheme will apply a flat percentage to all of his income, including the rental income without any allowance for input tax. He must still issue full VAT invoices to his VAT registered clients.

For the quarter ended 30 September example 3 in the appendix shows a calculation using the flat-rate scheme and since the flat-rate applies to all income, including the rental income which is presently exempt from VAT, the use of the flat-rate arrangements would increase Mr Jay's VAT liability for that quarter.

2) Continuous supplies of services

He may also wish to consider another arrangement which has the advantages of cash accounting but none of the disadvantages. It is likely that for VAT purposes his professional trusteeship work is considered to be continuous supplies of services.

There is a special VAT rule for this type of service which is that a person accounts for VAT at the earlier of the issue of a VAT invoice or payment. Therefore, if he could arrange to issue a request/demand for payment in respect of his services which does not constitute a tax invoice at the end of each month instead of a VAT invoice, he would only have to account for VAT when payment is received. He would issue a proper VAT invoice when payment is received. As with cash accounting, this arrangement has an automatic bad debt relief in relation to VAT. It has no impact on input tax claims and therefore produces a greater advantage than cash accounting. It would also produce a substantial cash flow benefit in the quarter in which he implements the arrangements.

3) The Trustees of the A plc Pension Plan

An employer may be entitled to treat input tax on costs relating to his pension fund as input tax of his business. In the event of insolvency, HMRC accepts this entitlement passes to the insolvency practitioner (the liquidator in this case).

In the event that the liquidator is unwilling or unable to claim the input tax, there is another avenue Mr Jay could pursue. In a VAT Tribunal case, *Capital Cranfield Trustees Ltd*, it was held that the sole independent trustee of a pension fund is required to buy in professional services such as actuarial advice to allow him to fulfil his trustee responsibilities. Since he charges VAT on his fees to the Plan, provided these services were instructed by him in his role as independent professional trustee and invoiced to Mr Jay, it may be possible for him to reclaim the VAT on these expenses through his own VAT returns. It would be prudent to agree this procedure with HMRC in advance.

Tutorial Note:

Note that the ATP case and changes in 2020 are not relevant here. Management of a Defined benefit pension fund is not exempt. The ATP case and Order in 2020 is to exempt the management of Defined Contribution funds that meet the required conditions.

APPENDIX

Comparison of VAT account for quarter ended 30 September 2024

1) VAT account using standard VAT accounting

	£	£
Output tax		4,400.00
Input tax		
Overhead expenses (all deductible – see below)	1,100.00	
Office expenses (all deductible – see below)	37.50	
Computer expenditure (all deductible- see below)	320.00	
		(1,457.50)
Tax payable		2,942.50

Input tax on the computer bought on hire-purchase is immediately deductible

Partial exemption calculation

Total input tax of £1,457.50 is a maximum £625 per month on average and exempt supplies do not exceed 50% of total supplies.

[Credit would also be given for students stating that the input tax relating to exempt activity was de-minimis under Reg 106 rather than Reg 105A. The business appears to have a residual percentage in the region of 85% and consequently the input tax attributable to exempt activity would also have met the Reg 106 de-minimis conditions]

The exempt input tax is within the de minimis limits.

2) VAT account using the cash accounting scheme

Turnover is below £1,350,000 and there is a good VAT compliance record.

	£	£
Output tax		4,400.00
Debtors		(2,200.00)
VAT payments received		1,800.00
Input tax		
Overhead expenses	1,100.00	
Creditors (all deductible – see below)	(240.00)	
Office expenses (all deductible – see below)	37.50	
Computer expenditure (all deductible- see below)	320.00	
		(1,217.50)
Tax payable		2,782.50

Since the computer purchase is by way of hire-purchase, it is dealt with outside the cash accounting scheme

Partial exemption calculation

Total input tax of £1,217.50 is a maximum £625 per month on average and exempt income does not exceed 50% of total income

[Credit would also be given for students stating that the input tax relating to exempt activity was de-minimis under Reg 106 rather than Reg 105A. The business appears to have a residual percentage in the region of 85% and consequently the input tax attributable to exempt activity would also have met the Reg 106 de-minimis conditions]

The exempt input tax is within the de minimis limits

3) VAT account using the cash based flat-rate scheme

Annual turnover is a maximum £150,000 and it is likely that the business would fall into the category of 'Business services not listed elsewhere' which has a 12% rate (looking at the figures he will not be a limited cost trader as 'relevant goods' are at least £560 (2% of turnover)).

Total VAT inclusive turnover 28,000 x 12% = £3,360
[Turnover calculated as 22,000 – 11,000 + 9000 = 20,000 x 120% = 24,000 + 4,000 rent.]

No input tax deductible
Computer expenditure not allowable since the
VAT inclusive value is not more than £2,000

Tax payable: £3,360

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This question, which tested some basic principles of special schemes, caused difficulty for a number of candidates. Although appropriate calculations and illustrations were asked for, few did so. Many candidates devoted a disproportionate amount of time to considering the annual accounting scheme and some candidates spent time considering various partial exemption methods even though it was clear that Mr Jay fell within the de-minimis limits.

Few candidates gave proper consideration to the prospect of recovery of fees incurred by the pension plan other than some general commentary on the rules for input tax deduction.

3. MR CREAM

1)

The company is not required to register for VAT under the 'future' test since its expected taxable turnover in any period of 30 days will not exceed the registration limit. However, the company exceeded the VAT registration limit of £85,000 under the historic test at the end of July 2024 when the cumulative turnover reached £87,754. It should have notified its liability to register to HMRC by 30 August and been registered with effect from 1 September 2024.

Calculation of net tax due

	£
Output tax (£45,407 x 1/6)	7,568
Input tax on general expenses (£361 +£359 + £360)	(1,080)
Pre-incorporation expenses	-

VAT on services prior to incorporation provided to a person who becomes a member, officer or employee of the company and receives reimbursement from the company, can be recovered. However, this is subject to the six month rule. Since the services in relation to the business plan were supplied more than six months before the effective date of registration, no VAT is recoverable.

VAT on computer	(400)

VAT is recoverable on the purchase of the computer since the goods are still on hand at the date of registration and purchased less than four years prior to registration

Net tax	6,088

The amounts shown as VAT on the invoices issued by the company prior to its VAT registration are not due as VAT to HMRC since no tax was chargeable on any services provided prior to the company's date of registration. However, HMRC can recover these amounts (under para. 5 Sch. 11 VATA 1994) as a debt due to the Crown.

2)

Since the company has failed to notify HMRC by 30 August 2024 of a liability to register for VAT, the company is liable to a penalty. The company is also liable to a penalty in relation to the issue of invoices showing an amount attributable to VAT whilst an unauthorised person (not registered for VAT).

The penalty is calculated as a percentage of 'lost revenue'. The potential lost revenue in relation to the failure to notify the company's liability to register is the net tax due from the date the company should have been registered to the date the company notified HMRC ie from 1 September to 30 November 2024. The potential lost revenue in relation to the invoices is the amount shown as VAT on those invoices.

The level of the penalty is 100% for a deliberate and concealed failure, 70% for a deliberate but not concealed failure and 30% for any other failure. HMRC consider a failure to be deliberate if the company knew it was required to notify its liability to register and was able but chose not to do so. Since the company was unaware of its liability to notify, it is likely that the penalty for failure to notify its liability to register will be 30% of the net tax due which is £1,826. However, provided the company makes an unprompted disclosure of its failure to notify, that is to say it discloses the failure at a time when it has no reason to believe HMRC has or are about to discover the failure, the penalty may be reduced. A disclosure is made by telling HMRC of the failure, helping to quantify the VAT liability and giving HMRC access to the records to check the amount of tax due. In

considering the quality of the unprompted disclosure, it is the practice of HMRC to allocate up to 30% of the possible total reduction for telling them of the failure, 40% for helping them and a further 30% for giving access to records. Depending on the timing, nature and extent of the disclosure, the penalty of 30% could be reduced to as low as £nil since less than 12 months has elapsed since the failure to notify.

Since the issue of the invoices is deliberate, the penalty is likely to be 70% of the amount shown on the invoices which is £500.00. An unprompted disclosure of the issue of the invoices could reduce the penalty to not less than 20%. The same consideration and weighting will be given to the quality of the disclosure in terms of telling, helping and giving access as for failure to notify. Interest may also be payable on the amounts of 'VAT' shown on the invoices.

HMRC must assess any penalty within 12 months of the expiry date of the appeal period for any tax due and it must be notified to the taxpayer. The penalty is then payable within 30 days. An appeal to the First Tier Tribunal may be made against both the imposition and amount of the penalty. An appeal against a penalty is treated in the same way as an appeal against an amount of tax due except that the penalty does not have to be paid before an appeal can be entertained.

Where a penalty is payable by the company in relation to a deliberate act or failure which is attributable to an officer of the company, that officer is liable to pay such portion of the penalty as HMRC may specify. Mr Cream himself therefore may be liable to a portion of the penalty in respect of the issue of VAT invoices prior to registration.

No penalties are payable if the failure is not deliberate and the company satisfies HMRC or the First-tier Tribunal on appeal that it has a reasonable excuse for the failure. Reasonable excuse for these purposes does not include insufficiency of funds, reliance on another person or continued failure to notify after the reasonable excuse has ceased. The issue of invoices would be considered a deliberate act and no reasonable excuse could apply in these circumstances.

It is also unlikely that the company has a reasonable excuse in relation to the failure to notify its liability to register since it had failed to take any steps to check its taxable turnover against the VAT registration limits.

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Most candidates made a good attempt at this question. Most identified the correct effective date of registration and calculated the arrears accurately, although some considered the pre-incorporation expenditure to be recoverable whereas in fact it fell outside the six month rule for services.

Most candidates dealt with the penalty regime adequately although some confined their answer to a general commentary without considering the rules in the context of Mr Cream's particular circumstances.

4. BBB HOLDINGS LTD

DEDUCTION OF INPUT TAX

In order to claim a credit for input tax on professional services, a VAT registered business must broadly satisfy three conditions:

- Firstly, there must have been a supply of goods or services made to the claimant which is chargeable to VAT in the UK;
- Secondly, there must be evidence of the VAT charged in the form of a tax invoice or alternative evidence acceptable to HMRC; and
- Thirdly, the input tax must be used by the registered person for the purposes of his taxable business activities (broadly sales which are subject to VAT).

Is there a supply made in the UK subject to VAT?

This aspect can be disposed of fairly easily. The tax invoices issued by the providers of professional services demonstrate that the services are provided by UK VAT registered suppliers, that the services are supplied in the UK and are subject to VAT.

Did BBB Holdings Ltd receive the supply of services?

Input tax can be deducted only by the person who received the supply, and this may not be the person who paid for the services or holds the tax invoice. This point has been considered in a number of VAT cases.

It is an established VAT principle that the contractual position is not determinative of the supply position. In the *Reed Personnel Services* case, the point at issue was whether a nursing agency was supplying nurses as agent or principal. The High Court confirmed that whilst contractual arrangements govern the private law position, they do not necessarily define the supply position which is a matter of fact for a tribunal.

In *Redrow Group Plc*, Redrow met the charges of estate agents of sellers of existing properties who purchased a new house from Redrow. In deciding that Redrow was entitled to claim input tax, the House of Lords set out four key factors to consider:

- Whether some form of agreement exists between the supplier and the person seeking to claim input tax;
- Whether the person seeking to claim input tax has undertaken to pay for the services (and has paid for them);
- Whether the person claiming input tax has received something of value for his business which forms part of its onward taxable supplies of goods and services; and
- The fact that another party also receives a benefit as part of the same transaction does not deprive the claimant of the right to input tax deduction (reaffirmed in the *Vos Aannemingen CJEU 2019 case)*.

Redrow was applied in *Mono Global Ltd*, where company directors commissioned a report on the company's profitability. HMRC argued that the report was used by outside investors in determining whether to invest in the company. The Tribunal held that the company was the prime beneficiary and accordingly it was entitled to recover the VAT charged as input tax. Any benefit to outside investors was incidental. The application of the Redrow case was also considered in the High Court decision of *Jeancharm Ltd.*

A company employed the son of its managing director, and provided him with a car, which was insured by the company for both private and business use. The son drove the car while drunk and was involved in a fatal accident. He pleaded guilty to causing death by dangerous driving and was sentenced to four years' imprisonment. The insurance company paid for the driver's defence, but paid the solicitors net of VAT. The company paid the VAT and reclaimed it as input tax. HMRC disallowed it as unrelated to the business.

The Tribunal allowed the company's appeal, but the High Court overturned the decision. The supply was made to the defendant not the business therefore the VAT was not the business's input tax.

In *Newcastle United plc*, Newcastle United Football Club said that it engaged footballers' agents in order to negotiate players' contracts. It remunerated the agents for the service. The agent charged VAT on its fees and the club claimed this as input tax. HMRC said that the agent did not represent the club, but rather supplied services to the player, regardless of who paid for those services. They disallowed the claim. The case was heard twice by the Tribunal after being returned by the High Court for further consideration and the second Tribunal allowed the appeal. *(Note: Sports Invest UK Ltd, FTT case in 2023, could also be cited here.)*

The above cases lend support to the view that the services of the solicitors and accountants jointly instructed by the three individuals as directors of BBB Holdings Ltd were supplied to the company for the purpose of its business notwithstanding that another party may also have enjoyed some benefit. In the case of the solicitors instructed by the bank, there is no direct contractual relationship between BBB Holdings Ltd and the solicitors.

The case of *Airtours Holiday Transport Ltd* should not have any bearing on this. In this case a large holiday company suffered financial difficulties and agreed that a major accountancy firm (PwC) should liaise on its behalf with its banks, bondholders and other creditors, and prepare a detailed report on its financial status. The company reclaimed input tax in respect of the relevant supplies. HMRC issued assessments to recover the tax, on the basis that the supplies had actually been made to the company's creditors, rather than to the company itself.

The Courts did not consider that Airtours received any benefit for its business in the same way that Redrow did. It did not start by needing PwC's report to place before the institutions; the institutions started by wanting the report for themselves, as the agreement states. The benefit to Airtours was that PwC's report might lead to continued finance from the institutions for which Airtours was willing (or was forced) to pay. In reality, the institutions were contracting with PwC for the provision of the services, and the involvement of the company in the agreement was only in order to make sure that it had to pay for those services.

So, whilst Airtours shows that joint instructions will not always guarantee recovery, the circumstances are quite different to those of BBB Holdings. In Airtours the bank needed information to continue its financial support ie the bank instigated the appointment of PWC. In BBB it is seeking new funding and joint instructions should enable input recovery on those costs.

Tutorial Note:

All relevant cases will gain credit and not all of the cases are required to illustrate the points above.

Is there evidence to support input tax deduction?

VAT regulations require that at the time of claiming input tax, the claimant must hold a tax invoice or such other evidence as HMRC directs. The invoices issued by the solicitors and accountants should satisfy the requirements of a VAT invoice but, for the avoidance of doubt the invoices should disclose the following:

1. An identifying number;
2. The tax point;
3. The date;
4. The name, address and VAT number of the supplier;
5. The name and address of client;
6. A description of the services; and
7. The amount payable, the VAT rate and VAT amount.

It appears that BBB Holdings Ltd will hold valid tax invoices addressed to the company to support input tax deduction.

Tutorial Note:

There have been recent cases about VAT invoices and deductions. CJEU Case C-235/21 allowed a sale and leaseback agreement to constitute a VAT invoice but the UK case of Tower Bridge (CoA 2022) denied input tax where the invoice did not have all of the information required above (some of points 4. and 5. were missing). Lucky Technology (FTT) 2022 held a claim can be made without the required invoice.

Be careful about going off on tangents where not required though. In this question tax invoices have been issued so a lengthy discussion of case law in this area would not be required.

In relation to invoices issued by the bank's solicitors, in *Telent plc* (formerly Marconi) the VAT Tribunal accepted that in accordance with Law Society rules, a solicitor can only invoice the client who instructed him. These invoices will therefore be addressed to the bank. However, HMRC do have discretion to accept alternative evidence to support input tax deduction by BBB Holdings Ltd and may exercise this discretion in favour of the company, but they are more likely to say that the solicitors' supplies were made to the bank therefore the input tax is not recoverable by BBB Holdings.

Is the input tax used by BBB Holdings Ltd for the purposes of its taxable supplies?

BBB Holdings became a member of the Green Holdings' VAT group registration and the invoices were issued once it had joined the group. Following the decision in *Kingfisher*, a VAT group is treated as a single taxable person with its supplies deemed to be made to or by the representative member. HMRC confirm in its partial exemption public notice that where a holding company incurs input tax on costs that do not relate to actual taxable or exempt supplies (for example, input tax on acquisition costs), this may be treated as part of the general overhead input tax of the VAT registration as a whole. This means that if the holding company is a member of a VAT group, the costs will be a general business expense of the whole group. Since the Green Holdings' VAT group makes only taxable supplies, VAT will be recoverable in full on the acquisition costs.

This situation is however very similar to the case of *BAA Ltd*. In this case ADIL was set up as the acquisition vehicle which subsequently joined the target group BAA after acquisition. The Court of Appeal ruled that ADIL had not carried on an economic activity at the relevant time. That time was when it incurred the liability to pay the VAT; at that point, its only intention was to take over BAA, which was an investment transaction within the principles of the *Polysar* case, rather than relating to an intention to make taxable supplies of goods or services.

The FTT had been wrong in law to find any connection between the inputs incurred by ADIL and the outputs later made by the BAA group. The inputs were only incurred in connection with the takeover of BAA and were unconnected with any outward supply that either ADIL or BAA had intended at that time to make.

Conclusion

There are some arguments to support recovery of VAT, certainly on the costs of BBB Holding Ltd's own advisers. Unfortunately, the case of BAA Ltd is very similar to the situation under consideration and as a result HMRC are likely to rely on this decision to prevent the recovery of input tax.

Finance Act 2007 should also be borne in mind which concerns financial penalties for errors on VAT returns. In view of this, prior to making the input tax claim, it is recommended to seek HMRC's agreement to the input tax deduction.

Tutorial Note:

Credit would be given for students discussing the impact LMUK may have on input tax recovery. Apportionment may be in point if part of the supply is deemed to be supplied to a third party rather than the claimant.

This answer is far more detailed than what is expected in the time available. The examiner wished to cover a multitude of relevant points.

Again, all relevant cases would receive credit.

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Many candidates provided a very creditable answer to this question. Most demonstrated a good knowledge of the principles of input tax recovery, an awareness of recent* case law developments and the ability to apply these to a practical situation.

*a number of the cases were recent when the question was set

5. WALRUS LTD

VAT ISSUES

TOGC issues

Normally the sale of the assets of a VAT registered or VAT registerable business will be subject to VAT at the appropriate rate. Where certain conditions are met however, the sale of a business qualifies as a transfer of a business as a going concern for VAT purposes ('TOGC'). This is then deemed neither a supply of goods nor a supply of services, falls outside the scope of VAT and therefore VAT is not chargeable.

The main conditions that are relevant here are:

- the assets must be sold as part of the transfer of a 'business' as a 'going concern';
- the assets are to be used by the purchaser with the intention of carrying on the same kind of 'business' as the seller (but not necessarily identical);
- where the seller is VAT-registered, the purchaser must be VAT-registered already or become so as the result of the transfer; and
- in respect of land that would be standard-rated if it were supplied, the purchaser must notify HMRC that he has opted to tax the land by the relevant date and must notify the seller that his option has not been disapplied by the same date.

It is important to be aware that the TOGC rules are mandatory and not optional (ie, the vendor cannot choose to charge VAT) so it is important to establish from the outset whether the sale is or is not a TOGC.

If VAT is charged when it should not have been, as the purchaser Walrus Ltd (WL) will not be able to reclaim this amount as input tax, because there was no taxable supply. The vendor should then cancel any tax invoice issued and provide WL with a refund of the VAT charged. Normally this will be by issue of a credit note or document giving similar effect.

It seems that the officer is probably correct that both sales were of businesses as a going concern and VAT should not have been charged.

Ming Ltd and Gordon Ltd should be contacted as soon as possible to effect recovery of the VAT that has been incorrectly charged.

Tutorial Note:

Where the sellers do not repay the VAT, it is not necessarily the case that the recipient is 'stuck' with the VAT. HMRC has discretion to allow recovery where the seller has paid the VAT over and therefore there is no loss to the revenue by paying it back to the buyer.

They have guidance in their manuals, for example, https://www.gov.uk/hmrc-internal-manuals/vat-transfer-of-a-going-concern/vtogc4150 where their guidance includes these points.

Capital Goods Scheme – outline

Where a taxpayer incurs more than £250,000 + VAT on a capitalised refurbishment or on land and building assets, the asset thus purchased or created falls within the capital goods scheme. This requires the initial VAT recovery to be adjusted over 10 periods (usually annual) to reflect the use of the asset over its economic life.

Businesses' VAT years usually run to the end of March, April or May dependent on their VAT stagger. Adjustments to the initial VAT recovery on items caught under the scheme (leading to payments to or from HMRC) are usually reported in the second VAT return following the VAT year end. However, an asset is purchased under the capital goods scheme as a TOGC, the sellers interval ends on the day before the transfer and adjustment intervals for the purchaser then run annually thereafter. Essentially the purchaser inherits the capital goods scheme from the seller, but the remaining intervals run to the anniversary date of transfer.

Capital Goods Scheme – records

In addition to the standard record-keeping requirements for VAT a person is also required to keep the following records for the purposes of the Capital Goods Scheme:

- description of the capital item;
- value of the capital item;
- amount of input tax incurred on the capital item;
- the amount of input tax reclaimed on the capital item;
- the start and end date of each interval, including the first;
- when adjustments are due; and
- the date and value of disposal (if the item is sold before the end of the adjustment period).

Although records must only be kept for six years, it is advisable to maintain CGS records for as long as adjustments may be necessary.

Capital Goods Scheme - TOGC

If a capital item is transferred to a person as part of a TOGC then the new owner assumes responsibility for any adjustments of input tax required under the scheme for the remainder of the adjustment period. As purchaser WL should have confirmed with the vendor of the Mercury Building whether it was covered by the scheme and details of the adjustments already made. The refurbishment carried out before WL's purchase sounds like it qualifies as a capital good scheme asset. Therefore, if the officer is correct that WL's insurance business is VAT exempt, WL may need to repay some of the input tax claimed by the original owner on this previous refurbishment as it is still within the 10 year life of the scheme.

Capital Goods Scheme – refurbishment

In order to be sure that adjustments are needed, WL should verify with the vendor what the refurbishment costs included and whether or not they were originally capitalised. If not capitalised, the expenditure would not fall within the scheme and WL would have no adjustment to make.

Also, certain items of expenditure are not included – typically goods should only be included in the value to be adjusted if they become part of the fabric of the building. If the refurbishment value (taking into account the exclusions below) falls below £250,000, no adjustments will be due under the scheme.

It may be that the refurbishment actually involved items that did not become part of the fabric of the building and were later removed - which would perhaps explain why the building did not look "refurbished" when WL purchased it.

Lost or destroyed assets

If the refurbishment has been stripped out since it occurred, then even if it did qualify under the scheme this would be counted as a destroyed or expired asset and no further adjustments would be needed in respect of the remaining complete scheme periods.

Insurance intermediary exemption

Of course, even if the refurbishment has not been stripped out and does fall within the scheme, an adjustment in relation to WL's occupation of one of the floors will only be necessary if the insurance introduction business carried on is properly VAT exempt as the officer alleges.

Insurancewide

The joined cases of *Insurancewide* and *Trader Media* concerned the VAT liability of click-through websites similar to WL's operations. The Court of Appeal concluded that, even where the role as insurance agent or broker was specifically disavowed by the company, the substance of what is done is more important in determining VAT liability. Whether a taxpayer is an insurance broker or agent depends on what they do.

The companies in the cases above provided more than an advertising click-through service as they appraised and selected the insurers with whom they had referral agreements based on pricing and offering and their website captured information on the clients' requirements and matched these against appropriate potential insurance providers.

The services provided were therefore exempt as insurance intermediary activity. If WL's services are akin to those in these cases, it seems that, again, the officer is correct, and an adjustment of VAT under the Capital Goods scheme will be due.

Tutorial Note:

Students should get credit for raising the issue of whether Walrus Ltd expected to occupy the property for an exempt purpose when they bought it from Gordon Ltd. Probably not - so Walrus was correct to confirm that the option to tax would not be disapplied.

Examiner's report:
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Candidates were able to score well on the basic conditions for TOGC and the outline of how the Capital Goods Scheme operates. Better candidates considered the impact financially for the company and there were some useful illustrative calculations in that regard.

Most scripts picked up on Insurancewide, but there was variety in the level of detail provided, with some candidates losing potential marks by merely mentioning the case name without demonstrating a grasp of the basic underlying facts or arguments. The best responses tied the case to HMRC's policy to date as evidenced in the Public Notice.

6. TWO ENTITIES

In general, input tax is VAT incurred for business purposes and only input tax is potentially recoverable through the VAT return (subject to partial exemption rules). UK legislation provides that where goods or services are purchased for use both for a business and a non-business purpose, the VAT should be apportioned, with only that proportion which relates to the business activity being treated as input tax. [s24(5) VATA 1994]

However, where a person incurs costs partly for business and partly for non-business use, he was (until 2010), initially entitled to full input tax recovery if he wished to apply the principle established in the *Lennartz* case by the CJEU.

The consequence of this initial full recovery was that, to the extent that the goods or services are later put to a private or non-business use, output tax will be due on the supply that is deemed to take place. These are the two sides of the so-called “Lennartz principle”.

The application of the Lennartz principle in the UK underwent a series of changes due to developments in European case-law and changing interpretation of the principle by HMRC.

From 22 January 2010 Lennartz was no longer available when there was non-business use. This effectively meant that charities could not use Lennartz on any purchases from that date – they had to apportion recovery under s.24(5). Consequently, when the charity bought the computer in 2022 they would not have been permitted to use Lennartz. The correct apportionment treatment was applied.

Further changes introduced by the EU and consequent UK legislation from 1 January 2011 meant that taxpayers buying land, property, ships, boats and other vessels or aircraft could only claim VAT to the extent that the asset was used for business purposes and subject to any partial exemption restriction.

As the sole trader incurred VAT on construction work in 2023 they too would not have been permitted to use Lennartz. The correct apportionment treatment was applied.

To accommodate any changes in the use of the asset, the Capital Goods Scheme was widened from 1 January 2011 so that it not only catered for changes in the exempt/taxable use of an asset, but also the business/non-business use. This will be relevant for the charity’s purchase of the £60,000 computer. Initial recovery will be based on taxable use in the year of purchase. If there is any change in the taxable to exempt/non-business use over the next four years the capital goods scheme will take account of those changes.

The sole trader does not have an asset which is within the capital goods scheme. They would have claimed a proportion of input tax in 2023 and as long as that was a reasonable claim no further adjustments will be required.

7. XESSUS LTD

1) Durdum Ltd

The issue of a credit note constitutes the adjustment of consideration for the supply under reg.38 SI 1995/2518 rather than a claim for bad debt relief or the correction of an error. The four-year time limit for s.80 VATA 1994 repayment claims, or adjustment of errors does not apply to reg.38 adjustments.

The VAT payable portion of the VAT account (and Box 1 of the VAT return) should be reduced by £10,000 (£50,000 x 20%) in the quarter to 30 April 2024.

2) Nampech Ltd

A bad debt relief claim can only be made between six months and four years + six months after the later of the time of the supply and the due date for payment of the debt (reg.165A SI 1995/2518). As the normal terms of trade applied, this period would have expired on 5 February 2024 (payment due by 5 August 2019).

Unless the company can show that a later due date was formally agreed (unsuccessfully argued by the taxpayer in the case of *Resteel Trading Ltd TC00185*), no relief can now be claimed for this bad debt.

It is also not possible to obtain the same relief by issuing a credit note, because this would not represent a true adjustment to the consideration or a cancellation of the supply.

3) Madstop Ltd

The original invoice would have shown output tax of £12,000 (£60,000 x 20%) and a gross value of £72,000. This should have been the amount claimed in Box 4 in July 2021.

On receipt of £40,000, Xessus Ltd must repay a proportion of this to HMRC by adding it to Box 1 of the current return (to 30 April 2024) in accordance with reg.171 SI 1995/2518. The "promise to pay the balance" has no effect until the money is actually received.

(40,000/72,000) x 12,000 = £6,667 due

Tutorial Note:

1/6 of £40k acceptable

4) Anessam Ltd

Payments on account are allocated to the earliest supply first unless they are allocated by the debtor to a later supply and settle it in full (reg.170(2)). The payment of £40,000 should therefore be allocated to the earlier July invoice as the debtor nominated August invoice was not settled in full.

The outstanding amounts are then:

Date	Gross		VAT
	£		£
10 July	8,000	(8,000/48,000) x 8,000 =	1,333
16 August	60,000		Nil
18 September	60,000		10,000
31 December `	120,000		20,000

The claim cannot be made earlier than six months after the due date for payment, which fell 30 days after the invoice date in each case. The 30 April 2024 return can therefore include a claim for the July and September invoices, but the December invoice cannot be claimed until the July return.

Box 4: £1,333 + £10,000 = £11,333

MARKING GUIDE

TOPIC	MARKS
Durdum Ltd: Reg 38 consideration adjustment (1), four year rule n/a (1), adjustments required (1), calculation of VAT (1)	4
Nampech Ltd: Time limits (1), no claim available as time limit expired 5/2/24 (1), later due date agreed? (1), credit note n/a (1)	4
Madstop Ltd: Original claim amount (1), Box 1 adjustment in current qtr (1), £6,667 due (1)	3
Anessam Ltd: Allocated to earliest invoice (1), not invoice specific as not paid in full (1), correct allocation of the £40k (1), July and September invoices claimed on current April return (1)	4
TOTAL	**15**

Examiner's report:
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Answers to this question on bad debt relief were disappointing with few candidates demonstrating any experience of dealing with bad debt relief or ability to apply the law to different situations. It is basic examination technique to "answer the question". The question asks the candidates to "explain the correct VAT treatment of each of the above matters...setting out how any relief is claimed". It is unlikely that there are marks allocated for copying out s.36 VATA 1994, or for copying out sections of the regulations.

On the other hand, there clearly are marks for identifying the specific elements of the law that are relevant to the situations described; applying those relevant parts of the law to the situations; and stating explicitly how the relief is claimed or adjusted, eg in Box 4 for a bad debt claim and Box 1 for the reversal of a claim. Reciting all the rules at length is unlikely to leave enough time to deal with the specific scenarios that the examiner has chosen to test.

Two very straightforward points were missed by many candidates:

- In (3), the invoice was for £60,000 plus VAT, but the receipt was £40,000. There is nothing in the question to suggest that anything more was received in respect of VAT. So the £40,000 is a gross amount. Too many candidates were unable to produce a sensible calculation of the clawback of bad debt relief in this circumstance.

- In (4), the due date for the September invoice falls in October; six months after mid-October is mid-April; a bad debt claim can be made in the return for the quarter to April. Several candidates identified that the due date for payment was relevant, but could not identify that six months after October falls in April. There is no substitute for taking proper care over basic calculations.

There were a number of more technical points which only a few knew:

In (1), there is a crucial difference between an agreed reduction in consideration following a dispute, and a bad debt. Some appreciated that it is not possible to issue a credit note as an alternative to claiming bad debt relief but did not understand that the credit note was appropriate in the circumstances described in the question, and would lead to a reduction in output tax rather than a claim in Box 4.

In (2), the legislation gives the time limit for making a claim as four years and six months from the due date for payment – not from the end of the return period in which the due date fell. Partial credit was given for identifying the cap as an issue, but this rule should be applied at face value rather than in some different way. A surprising number of candidates think that the time limit runs from the date the debt is written off in the accounts.

In (4), most candidates were aware that there is a rule about the allocation of payments to invoices (reg.170) but failed to read the whole of it and therefore did not realise that the customer's allocation would be ignored in these circumstances.

8. BLUE GROUP

General VAT position

The supply of staff employed by one company to another is subject to VAT. This was established some time ago by the Court of Appeal in the case of *CCE v Tarmac Roadstone Holdings Ltd*. This applies even where the companies are group companies, and the contractual arrangements are with one company but require the employees to work for other group companies. More recently, in the 2020 CJEU case of *San Domenico*, VAT was held to be chargeable on payments from a subsidiary that merely represented a reimbursement of the parent company's cost.

It is likely that HMRC have not identified this point in the Blue group since Blue Holdings plc is not VAT registered and will not therefore have been the subject of any assurance visits by officers of HMRC.

1) Historic position

Blue Holdings plc should have registered for VAT when the reimbursements for staff from other group companies had either exceeded the VAT registration limit or were expected to exceed the VAT registration limit in the next 30 days (para.1(1) (a) or para.1(1) (b) Sch 1 VATA 1994). The company should therefore review its turnover and the VAT registration limits and notify its liability to register to HMRC as soon as possible.

VAT will then be payable on the reimbursements received from group companies. Provision of staff is a continuous supply of services with a tax point arising at the earlier of receipt of payment or the issue of a tax invoice. Since Blue Holdings plc will not have issued any tax invoices, the tax point will arise at the date of payment. The arrears will be calculated by applying the appropriate VAT fraction to the gross amounts received. Blue Holdings plc will be able to issue VAT invoices for these amounts to the group companies. Since these companies are fully taxable, they will be entitled to claim credit for these amounts as input tax.

However, calculating arrears of VAT using the VAT fraction may leave Blue Holdings with insufficient funds to meet the VAT debt since the reimbursements received from other group companies will have been fully expended in paying salaries and other costs. To deal with this, depending on the agreements with the other group companies, Blue Holdings plc could treat the reimbursements received as exclusive of VAT and issue VAT invoices for the additional amounts of VAT due at the rate prevailing at the time of supply but, in any event, the group companies will be able to recover these amounts.

As a result of registering for VAT, Blue Holdings plc will be entitled to credit on VAT paid on costs and expenses since its date of registration including VAT paid on any assets on hand at the date of registration and services received in the six months prior to the date of registration. This will allow recovery not only of VAT on the direct costs of administering the staff arrangements but also of other overhead costs and expenses, for example audit and accountancy costs, provided that Blue Holdings plc holds tax invoices or satisfactory alternative evidence to support a claim to recovery.

Since the failure to notify occurred sometime in 2022, Blue Holdings plc will be liable to a penalty for its failure to notify a liability to VAT registration. A full unprompted disclosure to HMRC accompanied by quantification of the arrears of tax would minimise the penalty.

2) Future arrangements

Single VAT registration

Blue Holdings plc can remain separately registered for VAT and charge VAT on the salary and other reimbursements from the group companies. The distribution and wholesale companies will be able to reclaim this VAT if Blue Holdings plc provides them with a tax invoice. There would be no net VAT cost therefore but there will be the administrative cost of arranging VAT payments and, depending on the VAT quarters of the group companies, there may be some cash flow disadvantage.

There is likely to be a VAT cost in relation to VAT charged to the financial services company since this company is likely to be totally or partially VAT exempt and will therefore have a restriction on its amount of recoverable VAT. This irrecoverable VAT would potentially be an allowable expense in computing taxable profits.

VAT Group registration with the distribution and retail companies

Since the group is under common control, Blue Holdings plc could, in the future, register as a VAT group with the existing companies. Members of a VAT group registration share a common VAT number and submit a single VAT return. No VAT is chargeable on services provided between members of a VAT group and therefore this would remove the administrative burden of Blue Holdings plc charging VAT and the other companies reclaiming the VAT from HMRC.

Since the VAT group would be fully taxable for VAT purposes, Blue Holdings plc could reclaim VAT on the costs of supplying staff as well as its other overhead costs.

However, members of a VAT group are jointly and severally responsible for any VAT due by the group and all the member companies would have to be comfortable with this arrangement.

VAT would still be payable on reimbursements received from the financial services company and this is still likely to create a VAT cost if the financial services company cannot recover all the VAT on its costs.

VAT group registration with the existing companies and the new financial services company.

Formation of a VAT group registration with all the companies including the financial services company would not only remove the administrative requirement to charge and account for VAT on staff supplied to other group companies, but would also produce an actual VAT saving, in that it would not create any irrecoverable VAT in the financial services company since no VAT would be chargeable on staff provided to it.

HMRC have the power to refuse an application for VAT group registration on grounds of protection of the revenue. However, they have stated that they will not use this power when the saving flows from the normal consequences of VAT group registration, which is the case here.

There are also some anti-avoidance provisions which prevent the inclusion of joint venture companies in VAT groups, but these provisions only apply where the joint venture company makes supplies to other group companies rather than receives supplies from other group companies, which is the case here.

However, since a VAT group is treated as a single taxable person, exempt income of the financial services company will become income of the VAT group registration and may restrict recovery of VAT not only on costs of the financial services company but on overhead costs of the group. Partial exemption calculations will be necessary, and it may be necessary to apply for a special method of apportioning input tax. Also, since the financial services company includes a third party investor, there may be difficulties concerning agreement to joint and several liability for VAT due by the group as a whole.

VAT group registration including Blue Holdings plc and the financial services company

A VAT group registration could be formed between Blue Holdings plc and the new financial services company. This would avoid a loss of VAT on provision of staff to the financial services company, but the group would be partially exempt with a restriction on recovery of VAT on the direct costs of the financial services company as well as some possible restriction of VAT recovery on the overhead costs of the group.

Again, the presence of the third party investor in the financial services company may be an obstacle to VAT grouping in view of the joint and several liability position noted above. It would still be necessary for Blue Holdings plc to account for VAT on the provision of staff to the other group companies although as noted above, the other companies should be able to claim an input tax credit for this VAT.

Joint contracts of employment

No VAT charge arises on the supply of staff between companies if the staff concerned have joint contracts of employment with both companies. However, the present arrangements which simply require the employee to work for other group companies are not regarded as joint contracts of employment for this purpose.

A tribunal case provided some guidance on the criteria for joint employment arrangements. In *CGI (Europe) Ltd*, the arrangements were held in substance and reality to be a supply of services rather than a supply of staff. However, this is unlikely to be an issue in this case since the employees concerned work under the direction of the different group companies rather than under the control of Blue Holdings plc.

However, the introduction of joint contracts of employment would raise a number of business issues, not least that the employees may acquire additional employment rights and the human resources division would have to consider this situation carefully.

Staff secondment concession

HMRC operate a concession (now covered in Notice 700/34) in circumstances where staff are seconded from one company to another, and the recipient company pays the employees' salary directly to the employee. Although strictly the satisfaction of another party's liability to pay salaries would amount to consideration, in these circumstances HMRC disregard the payments for the purposes of VAT.

The terms of the concession are that the employer must not be an employment business within the meaning of the Employment Agencies Act 1973 and the recipient business must:

a) exercise exclusive control over the allocation and performance of the employee's duties during the period of secondment;

b) be responsible for paying the employee's remuneration directly to the employee; and/or

c) discharge the employer's obligations to pay to any third party PAYE, NICs, pension contributions and similar payments relating to the employee.

The concession does not apply if the secondment of the employee is done with a view to the employer deriving any financial gain from the secondment or any other arrangements with the recipient business.

It is uncertain whether the case of *San Domenico* (above) questions this concession operated by HMRC, and it also needs to be determined as to whether Blue Holdings plc would fall within the definition of an employment business within the meaning of the Employment Agencies Act for the purposes of the above Notice and therefore be unable to benefit from the concession, in any event. An employment business is defined as a business of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity. This position could be considered further if required.

Conclusion

The use of joint contracts of employment would raise a number of human resource issues, including asking all employees to sign new contracts and the provision of additional employment rights.

The staff secondment concession, even if available, would require the payroll functions to be carried out in the individual companies which would be counter to the group strategy and require substantial administrative change and duplication of tasks.

On balance, the best solution may be the formation of a VAT group including all the group companies. This would remove the administrative burden of issuing VAT invoices and create a real VAT saving in the case of staff provided to the financial services company.

This would also allow the holding company to recover at least a proportion of VAT on its overhead costs since, although the financial services company will introduce some exempt income into the group, there will also be a substantial amount of taxable income generated by the other group companies.

The main issue is that the third party investor in the financial services company would have to be comfortable with the joint and several liability provisions for group VAT. It may also be necessary to apply for a group partial exemption special method. Lastly, it would need to be considered whether the formation of a group would bring the companies within the scope of the monthly payment of VAT on account rules.

Tutorial Note:

This level of detail is not achievable within the allotted time. Students should ensure they have covered the key issues rather than aim for the level of detail in the examiner's answer. In particular, the group registration point should be summarised more succinctly by students.

A good student answer would be structured as follows:

Part 1
- SR supply of staff
- Late registration

Part 2
- Single VAT registration (not ideal for financial services company)
- Group VAT registration
- Joint employment contracts
- Staff secondment concession (briefly)

Examiner's report:
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This question tested some basic concepts about supply of staff and alternative strategies to mitigate the VAT cost. A surprisingly high number of candidates failed to identify the standard-rated supplies of staff, some considering them to be exempt or outside the scope of VAT.

A number of candidates considered a future structure without commenting on the historical position: as ever candidates will benefit from a careful reading of the requirements of the question.

Many candidates identified the opportunity for joint employment arrangements and the use of a VAT group. Some candidates wasted time by considering the position of 'pure' holding companies which was not in point since the company in question was making taxable supplies. Other candidates spent time dealing with the VAT grouping registration procedure which was clearly not required in the context of the question.

9. BTSKY LTD

Background

Wholesale SMS services are regarded as wholesale 'telecommunication' services by HMRC.

Under the normal VAT system, when a VAT registered business sells goods or services, it charges the customer VAT which the seller pays to HMRC. The seller also issues a VAT invoice to the customer and, if he is VAT registered and will use the goods or services for the purposes of his own sales which are subject to VAT, the customer can then reclaim the VAT paid to the seller from HMRC.

In some industry sectors, however, including trading in wholesale telecommunications, a form of VAT evasion known as "missing trader fraud" emerged. In a typical "missing trader fraud", the seller does not pay the output VAT collected to HMRC, but the purchaser is still entitled to reclaim it from HMRC. The result is that the Treasury is effectively financing the customer's VAT refund.

In response to the escalating threat of VAT fraud in connection with wholesale telecommunication services, the government introduced legislation, over seven years, ago for the supply of wholesale telecommunication services within the UK .

Reverse charge mechanism

HMRC introduced a so called "reverse charge accounting mechanism" under which it is the customer, rather than the supplier, who accounts to HMRC for the output VAT on the wholesale supply of telecommunication services. There is no 'de minimis' rule excluding supplies under £5,000 as there is in the case of mobile telephones and computer chips. Notice 735 describes the rules in detail.

Purchase of wholesale SMS services

The seller should not charge the company any VAT and obviously the company should not pay any VAT to the seller. The seller should provide BTSKY Ltd with an invoice indicating that the buyer will account for VAT (see below for details). BTSKY Ltd must account for output tax on the purchases in box 1 of the VAT return but should not enter the value of the purchases in box 6. Since BTSKY Ltd will use the purchase for the purposes of its taxable transactions ie an onward sale, the input tax on the reverse charge purchases can be reclaimed via box 4 of the VAT Return. This is not affected in any way by the arrangements under which the next purchaser will account for VAT under the reverse charge on the subsequent sale. The value of the purchases should be included in box 7 of the return. This procedure is essentially an accounting mechanism and will have no impact on the BTSKY Ltd's cash flow.

Sale of wholesale SMS services

A seller should not charge VAT on the resale of the wholesale SMS services since the purchaser will account for VAT under the reverse charge mechanism. The seller must issue an invoice showing all the information normally required to be shown on a VAT invoice and also annotate the invoice to make it clear that the reverse charge applies, and that the customer is required to account for the VAT.

The amount of VAT due under the reverse charge rules must be clearly stated on the invoice but should not be included in the amount shown as total VAT charged. The precise wording is not prescribed in law and either of the following would be acceptable:

- customer to pay output tax of £X to HMRC
- UK customer to pay O/T of £X to HMRC

Alternatively, any of the following would also be acceptable, provided that the amount of VAT is shown elsewhere on the invoice (but not as total output tax charged):

- VAT Act 1994 Section 55A applies
- s55A VATA 94 applies
- customer to account for the VAT to HMRC
- reverse charge supply – customer to pay the VAT to HMRC
- customer to pay VAT to HMRC
- UK customer to pay VAT to HMRC

The seller does not show any output tax due in box 1 of its VAT return but should enter the value of the sales in box 6.

The seller will not be required to complete a Reverse Charge Sales List in relation to transactions falling under the reverse charge mechanism for wholesale telecommunication services.

The reverse charge mechanism would not apply when selling SMS services to a member of a corporate group for onward supply within that corporate group, and where the corporate group members consume the SMS services. Where BTSKY has received confirmation of such intent they should charge VAT to the corporate member.

Time of supply

The supply of telecommunication services is a continuous supply of services. The tax points are therefore the issue of a VAT invoice or the receipt of payment, whichever is earlier.

Tutorial Note:

Notice 735 provides useful detail.

10. RED & YELLOW BRICKS LTD

Sale of retail development to an investor

Ordinarily the sale of the new retail units would be subject to VAT since these are new commercial buildings and in any case an option to tax has been exercised over the development. This would enable the company to reclaim all the VAT incurred on the costs of the development.

However, in some circumstances properties can be transferred 'free' of VAT if the development is considered to be the transfer of a letting business as a going concern. In their published guidance, HMRC accept that, where agreements for leases have been signed, even though the tenants are not yet in occupation, a property letting business may be being carried on. They also accept that a property transfer that involves the sale of a mixture of let and unlet properties can also be eligible to be disregarded as a VAT supply under the transfer of going concern rules.

This relief (which is mandatory if the conditions are satisfied) applies where the purchaser is VAT registered or obliged to be registered at the effective date of the purchase and intends to use the assets for letting purposes. Since the retail units are new commercial properties and also opted, it is important that before completion of the sale, the purchaser confirms it will carry on the same or a similar business and that it notifies HMRC of its option to tax on the properties and also confirms in writing to the seller that its option to tax will not be disapplied by anti-avoidance provisions. This is unlikely to be in point in this case but should be confirmed. If any of these conditions are not met, VAT will be chargeable on the retail units.

If the transfer is treated as a going concern, the company will have to consider the position in relation to input tax on the development and on the expenses of the sale. Since the company has opted to tax the retail premises and intends to sell the units on long leases, all supplies from the developments will be or would have been fully taxable.

In view of this, there should be no restriction on recovery of VAT on the development costs. Similarly, since the disposal costs relate to a fully taxable development, HMRC accept that input tax on these costs can also be recovered in full.

There will be no VAT consequences for the company from giving a rent guarantee. If payments are made under the terms of the guarantee, these will be compensation for loss of income rather than payment for any right over land. The investor should not charge VAT on any guarantee payments, therefore. The only exception to this would be if the company acquires any rights of occupation in the property as a result of the guarantee payments. Similarly there will be no VAT implications of the rent adjustment.

Since the companies are connected, the value for SDLT purposes will be not less than the market value of the development, excluding VAT (s53 FA 2003).

Sale to Housing Association

When a property has been opted to tax, the option normally extends to a disposal of the property. However, an option to tax has no effect if the property is sold to a Housing Association which intends to build houses on the site. For this relief to apply, prior to completion, the purchaser must give a certificate on Form 1614G certifying that it is a registered housing association and that the land will be used for the construction of houses after any necessary demolition. This is a legal requirement.

The certificate must be given before the price for the grant to the recipient by the seller is legally fixed eg generally on exchange of contracts. If the certificate is issued after this date, the seller is not obliged to accept the certificate but may do so at its discretion.

However, this relief is only available for the part of the site which will be used for the construction of housing. VAT will still be payable on the part to be used for the retail complex and it will be necessary to agree an apportionment of the sale proceeds between the two parts. It is also likely that the road will fall within the definition of a new civil engineering work and be subject to mandatory VAT, irrespective of the effect of the option to tax. A value will also have to be apportioned to the road, therefore. A tax invoice should be issued in relation to the parts which are subject to VAT.

VAT incurred on the construction of the road will remain recoverable in full since the sale of the road will be subject to VAT. However, there will be clawback of a proportion of the VAT incurred on professional costs since the sale will now be part exempt (re: dwellings) and part taxable (re: retail). This will be repayable on the VAT return for the period in which it becomes apparent that their original taxable intentions would not be fulfilled.

The transaction will be exempt from SDLT provided the purchase is funded with the assistance of a public subsidy or the housing association is a non-profit registered provider of social housing or a registered social landlord controlled by its tenants (s71 FA 2003).

Sale of building to a charity

An option to tax has no effect where a building is sold to a charity which confirms that the property or part of the property will be used solely for relevant charitable purposes other than as an office. Use for a relevant charitable purpose in this context means use by a charity otherwise than in the course or furtherance of a business.

There is no statutory requirement for the purchaser to provide a certificate of the intended use but, before completion, the seller should obtain written confirmation from the purchaser that it intends to use part of the building solely for a relevant charitable purpose.

HMRC interprets “use as an office” in the sense of a headquarters administrative office and the working office should be accepted as part of the charitable use. However the area used as a cafeteria is unlikely to qualify as charitable use. In applying the “solely” test, HMRC apply a de minimis level of 5% but this will be breached in this case.

Therefore, the option to tax will not be excluded in relation to the cafeteria area. It will be necessary to apportion the sale proceeds therefore between the exempt part and the area subject to VAT, and a VAT invoice issued in respect of the non-charitable use area.

The sale of 90% of the building as VAT exempt will trigger a clawback of part of the VAT reclaimed on the purchase. The amount repayable will be calculated in accordance with the company’s partial exemption method and repayable on the VAT return for the period in which it becomes apparent that their original taxable intentions would not be fulfilled.

The sale will be exempt from stamp duty land tax provided the charity intends to use the ‘greater part’ of the property for qualifying charitable purposes. The transaction must not have been entered into for the purpose of avoiding SDLT and the relief will be withdrawn if, within three years, the property is used other than for qualifying charitable purposes.

Construction of new office

VAT incurred on the purchase of materials for the new office will be recoverable but only to the extent permitted by the company’s partial exemption method.

The use of in-house labour may give rise to a VAT charge under the provisions relating to the self-supply of construction services. Broadly these rules provide that where a person provides construction services to himself with an open market value of £100,000 or more, that person must charge himself VAT as if he had purchased the services from a third party. In this instance the VAT charge will arise on a market value of £140,000

and output tax of £28,000 must be accounted for on the return for the period in which the work is completed. However, as with the building materials, Red & Yellow Bricks Ltd will only recover a proportion of this VAT in accordance with the company's partial exemption method. The development will therefore give rise to a VAT cost in the company.

If the value of the materials and services exceed £250,000, adjustments to the amount of input tax reclaimed will be necessary each year in accordance with the capital goods scheme. There will be no SDLT consequences of this development.

Examiner's report:
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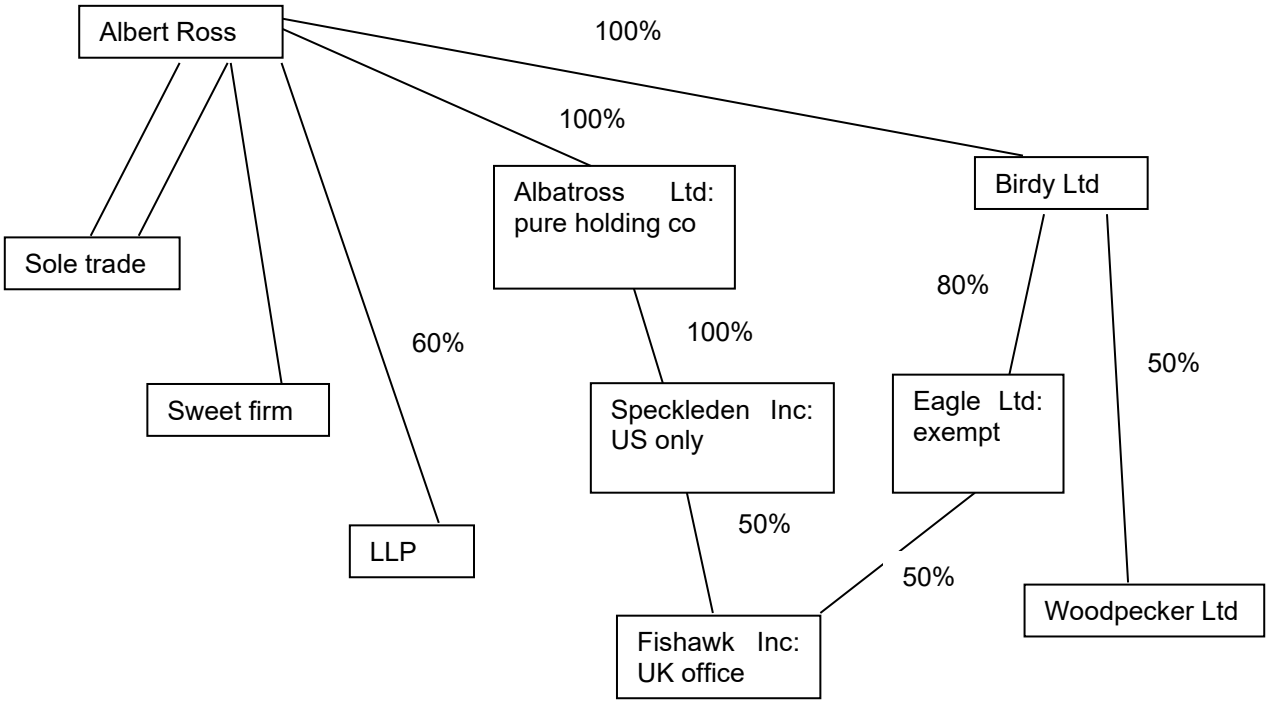
This question dealt with the VAT and SDLT treatment of various property transactions. It was disappointing that only a few candidates recognised the opportunity for transfer of going concern treatment in the first part of the question. A number of candidates spent time considering the possible disapplication of the option to tax under anti-avoidance rules even though it was clear that the connected company would not occupy the property.

Most candidates recognised the opportunity to disapply the option in relation to the sales to the housing association and the charity although some candidates overlooked the point that an apportionment was possible between exempt and taxable in relation to the charity sale.

Several candidates did not address the SDLT aspects of the question. The SDLT treatment was in fact relatively straightforward in most cases and many candidates could have earned additional marks by a quick reference to the SDLT legislation.

11. ALBERT ROSS



Eligibility for grouping

Group registration is permitted under s.43A VATA 1994. The following are eligible to be grouped together:

- Two or more bodies corporate which are established in or have a fixed establishment in the UK, which are controlled by the same person, (that person being an individual, business partnership or company), or one controls the other
- An individual carrying on business who is established or has a fixed establishment in the UK can be grouped with one or more UK corporate bodies where the individual controls them
- Two or more persons carrying on a business in partnership which is established or has a fixed establishment in the UK can be grouped with one or more UK corporate bodies where the partnership controls them

In this case, Albert Ross is the person who can count as controlling the bodies corporate which would then qualify under the above rule.

Albert's sole trade can be group registered with the bodies corporate that he controls.

The limited liability partnership is a body corporate and is controlled by Albert. It therefore appears to be eligible for grouping.

Albatross Ltd is a pure holding company and is therefore not eligible for registration in its own right. However, UK policy is to allow such a company to be grouped with taxable trading companies.

Speckleden Inc appears to have no UK establishment and therefore cannot be part of a UK VAT group.

Birdy Ltd meets the control and establishment criteria and can be grouped.

Eagle Ltd is wholly exempt and therefore not eligible for registration in its own right. Once again, UK policy allows it to be grouped with other companies.

Woodpecker Ltd is not controlled by Albert (the indirect holding of 50% is not enough – more than 50% is needed). It is therefore not eligible for grouping.

Fishawk Inc is controlled by Albert (effectively 100% through control of two 50% holdings). Provided the UK office constitutes a "fixed establishment" (sufficient human and technical resources to make or receive supplies), it is eligible for grouping. This appears likely as it must be one of the six businesses currently separately registered for VAT.

The partnership with his wife does not control the bodies corporate (he controls them personally) so is ineligible to join the group.

Summary

Eligible: Albert's sole trade, LLP, Albatross Ltd, Birdy Ltd, Eagle Ltd, Fishawk Inc

Not eligible: partnership with wife, Speckleden Inc, Woodpecker Ltd

Bonus point: including an exempt company such as Eagle should be considered carefully. It may increase recovery in respect of overheads of that company and avoid the need to charge VAT on intra-group supplies which that company could not recover; but it may also restrict recovery on group overheads because the exempt turnover would have to be taken into account.

Examiner's report:
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This was a relatively easy question, but the marks still had to be earned by applying the law correctly. Once again, candidates should read the question and consider whether it is appropriate to copy out the legislation: a mark might be given for a good statement of the conditions in s.43A, but the much more important part of the answer was to apply those conditions to the different businesses described.

Some of the basic errors which appeared too often were:

- writing down that members of a group have to be "bodies corporate", but then including the sole trade consultancy and the partnership with the wife (ie giving incorrect advice, contradictory advice, and wrongly concluding based on the advice as to who can be in a group);
- failing to give a conclusion on whether a company could be in or out
- failing to consider whether Fishawk's UK office would constitute a fixed establishment
- including a company in which the group held only 50%.

12. STRONGWINDS

Part 1)

Strongwinds Ltd ("Strongwinds")

Future supplies of energy from this development will be taxable supplies ie they will be subject to VAT. VAT registration is mandatory when the company's cumulative turnover in any period of 12 months exceeds the VAT registration limit of £85,000, or if at any time it expects its turnover will exceed the registration limit in the following 30 days.

Strongwinds initial funding has come from equity investment and loans, neither of which constitutes taxable supplies for the purposes of VAT registration. However, consideration should be given to the treatment of the grant income. This type of payment will only give rise to a VAT liability when it constitutes consideration for supplies of goods or services (see the case of *Keeping Newcastle Warm*). In Strongwinds case, the grant does not subsidise any services supplied by the company; Strongwinds is merely required to comply with the conditions attached to the use of the funds. In these circumstances therefore the grant payments are outside the scope of VAT. Since Strongwinds will not make taxable supplies until 2026 therefore, there is presently no legal requirement for the company to register for VAT.

However, Strongwinds has already incurred VAT on professional costs and is likely to incur substantial amounts of VAT on the acquisition of sites and construction costs prior to any sales being made. Once a company is VAT registered, it can reclaim VAT on all costs which relate to its taxable supplies and may also reclaim VAT incurred prior to registration on goods on hand (bought in the last four years) and services received in the six months prior to registration. If Strongwinds delays registering for VAT until it breaches the mandatory VAT registration threshold, once registered it is likely to be able to recover VAT incurred on site costs since freehold land is considered to be "goods" for this purpose. However much of the VAT incurred on professional and contractors' services may fall outside the six month limit with the result that the VAT may not be recoverable and become an additional cost for the project. In any event, for cash flow purposes, it would be useful for Strongwinds to be able to reclaim credit for VAT spent as the project develops.

In order to recover VAT payable on development costs, Strongwinds can apply for VAT registration as an 'intending trader'. In order to be registered as an intending trader, the company should provide HMRC with objective evidence of its intention to make taxable supplies in the future. The feasibility study commissioned by the company, application for planning permission and documents relating to the acquisition of sites should be sufficient for this purpose. It is not necessary for the company to evidence the exact date when it will commence making taxable supplies or the value of the supplies.

Tutorial Note:

As an aside, the case of Hedge Fund Investment Management Ltd (FTT 2022) said that you can be an intending trader, even if you do not make any sales for four years. In this question the sales are expected in 15 months time and subject to the point below, registering from September 2022 for sales anticipated in February 2026, are still within the four year period shown by this case.

Subject to satisfactory evidence, intending traders are normally registered for VAT from the date of their application. However, it is possible with the agreement of HMRC to be registered from an earlier date. This date cannot be more than four years prior to the date of the application. An application for a retrospective date must be made at the time of the application since the date of registration cannot be amended later. The objective evidence referred to earlier must also show that the company was carrying preparatory business activities at the date requested. The company should therefore consider an

application to register from 1 September 2022 (or within six months of this date) since this would allow recovery of VAT incurred to date on development costs.

If the company registers for VAT with effect from 1 September 2022 (say), it will be able to claim repayment of VAT incurred on previous and future costs. This VAT recovery is subject to the company holding proper VAT invoices in respect of items of expenditure but will not be restricted as a consequence of the receipt of grant income. This VAT can be reclaimed through the company's VAT returns. Since the company will not pay any VAT on sales until 2026, it may be beneficial for the company to make an application to submit VAT returns on a monthly basis rather than quarterly which is the normal procedure. This will assist cash flow in the development stages and the company can revert to quarterly returns at a later date.

Eastwinds plc ("Eastwinds")

The rent and service charges made by Eastwinds to Strongwinds are exempt from VAT, the service charges being seen as further consideration for the lease as long as they are provided under the terms of the lease. These amounts do not count for the purpose of assessing liability to VAT registration. Charges for telephone and computer services would potentially be subject to VAT but are presently below the registration limits. These services are categorised as continuous supplies of services for VAT purposes and a tax point (the time at which VAT becomes chargeable) will arise when payment is made. By the time payment is made by Strongwinds, these amounts may have reached a level which ordinarily would create a liability for Eastwinds to register for VAT since a business has a requirement to register at any time if its expected turnover in the following 30 days will exceed the VAT registration threshold. However the Court of Appeal held in *B J Rice and Associates* that the continuous supply of services provisions cannot operate to bring into charge services performed before the date of VAT registration. Since future charges by Eastwinds are likely to fall below the VAT registration limits, there will be no requirement for Eastwinds to register for VAT. Even if any VAT were chargeable, it would be reclaimable by Strongwinds with no resulting net cost.

If Eastwinds does not register for VAT, it follows that it will be unable to reclaim any VAT on costs and expenses. In the future, therefore Eastwinds may wish to consider a VAT group registration with Strongwinds, nominating Strongwinds as the representative member of the group. A single VAT number would apply to the two companies and Strongwinds, as representative member, could deal with the administrative requirement to submit VAT returns. No VAT would arise on any recharges from Eastwinds to Strongwinds, regardless of the level of the charges. Since members of a VAT group of companies are treated as a single entity for VAT purposes, this arrangement would entitle Eastwinds to recover VAT on future expenditure. This arrangement would also make Eastwinds jointly and severally liable for any VAT due from Strongwinds.

Part 2)

Project not completing

In the event that the project does not proceed because the company is unable to obtain the necessary planning permissions/licences and the sites are sold, the company will need to consider the VAT consequences. Ordinarily the sale of land is exempt from VAT and in the case of Strongwinds, this would result in a clawback of any VAT reclaimed on the purchase of the sites.

This could be avoided by the company opting to charge VAT on the sale of the land. The company will also have to de-register for VAT since it will no longer have an intention to make supplies subject to VAT. This will give rise to a number of VAT issues. Provided the intention to trade is frustrated by matters outside the control of the company, generally it will not be required to repay any of the VAT it has reclaimed. However, a consequence of VAT de-registration is that any assets held by the company will be deemed to be sold to the company at their replacement cost at the date of registration.

This would create a deemed exempt sale of the land with similar consequences to an exempt sale of the land ie a clawback of VAT reclaimed on the purchase. A taxable sale of the land using an option to tax prior to de-registration is clearly desirable, therefore. Any other assets held by Strongwinds will also be deemed to be sold to the company at the date of registration giving rise to a possible further VAT cost. However, VAT is waived if the amount involved is £1,000 or less.

Sale of the business

The VAT consequences of a sale of the business will depend on whether Eastwinds sells the shares in Strongwinds or Strongwinds sells the business as an asset sale. If a disposal is by way of a share sale, the VAT registration of Strongwinds will continue uninterrupted provided it is a single company registration and Strongwinds will continue to reclaim VAT and account for VAT on future sales through its existing VAT number. If a VAT group registration is in place, however this will have to be cancelled since the control requirements will no longer be met and each company will have to address its own future VAT registration position. Following the sale, Eastwinds will have no liability for any VAT due from Strongwinds subject to any warranties and indemnities in the sale contract. Any VAT incurred on the costs of the sale will not be recoverable by Eastwinds.

If Strongwinds sells the wind farm business and assets, in principle the assets will each be subject to VAT at the relevant rate. However, where a business is sold as a going concern, the assets may be sold free of VAT subject to conditions. These are principally that the new owner is VAT registered or becomes liable to register for VAT as a result of the business transfer and the new owner will use the assets in the same kind of business. The wind farms will be classed as civil engineering works and therefore would ordinarily be subject to VAT on a sale in the first three years following completion of construction. In view of this an additional rule applies on a transfer of a going concern which is that the purchaser must notify an 'option to tax' over the wind farms to HMRC prior to the transfer. Strongwinds should ask to see evidence of the option to tax.

Once it has sold the business, Strongwinds will have to de-register from VAT unless it intends to carry on another taxable business activity. If the company has retained any assets, it will need to consider whether a VAT charge will arise on de-registration as noted in the comments about the project not completing. VAT incurred on the costs of the sale of the business which are invoiced after de-registration may be reclaimed by an application to HMRC on form 427.

Tutorial Note:

The answer above is more detailed than what would be expected in the time available.

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This question offered some straightforward marks to candidates who had a good knowledge of the VAT registration rules. Some candidates restricted their answer to a general commentary on the rules and did not score highly as a result. Candidates should always apply their knowledge of statute and case law to the facts presented in the question. Candidates who achieved high marks provided a thorough explanation of the conditions for intending trader registration and their relevance in this case.

The last part of the question requirement indicated that five marks were available for the answer, but few candidates provided sufficient detail in this part to secure full marks.

13. WILL JACKSON

VAT assessment rules

HMRCs power to raise assessments is set out in s.73 VAT Act 1994. If they believe that a VAT return is wrong, they can raise an assessment "to the best of their judgement" to correct the amount declared by the trader. The courts have considered what is meant by "to best judgement" many times and have specifically approved the use of extrapolation. HMRC are not required to identify every transaction as a trader should do when accounting for VAT; provided they have some evidence on which to base the assessment, and have used that evidence honestly and logically, the assessment will be in principle valid.

However, the 2022 FTT case of *Chrisovalandis Georgiou* does put a caveat on the above. In that case HMRC did not look at seasonal variations or locations of fish 'n' chip shops and therefore their assessments were not held to be 'best judgement'. If Will has validated reasons as to why a simple extrapolation is not appropriate, then the assessments might fail.

Assessments are also subject to time limits. An assessment can always be raised within two years of the end of a return period. In the absence of dishonesty, an assessment cannot be raised more than four years after the end of a return period. In between two and four years, HMRC are not allowed to raise an assessment more than 12 months after having all the facts in their possession which are sufficient to base the assessment on – or, to put it another way, they must show that they have discovered an important fact in the 12 months leading up to the issue of an assessment. If they have not learned anything new in the last 12 months, they cannot raise an assessment more than two years after the end of the period.

Application to company's situation

It appears that the assessments raised for the periods to March and June 2020 are out of time as 28 September 2024 is more than four years after the end of those periods. HMRC should readily accept this and vacate the assessments.

It also appears that the assessment for September 2020 is out of time because, from the information provided, it can only be based on evidence that HMRC have had for more than 12 months. It is required to be based on evidence; nothing new has been provided since March 2022; they must therefore have had all the information they required for more than a year. They may try to argue that they discovered a material fact during the last year – if so it will be necessary to consider that and respond. However, past cases have established that a court decision is not something that will "start the clock again". They should not have been taken by surprise by the court decision in March 2024: they should have raised assessments for past periods long before that.

Will says that he wrote to query the assessments. It is likely that HMRC will interpret Will's query as accepting their offer for a formal review of the decision to assess, but that is what he should have asked for within the 30 day period. A copy of Will's letter should be obtained to check this. HMRC should either confirm or amend their decision within a further 45 days, whereupon Will would have the right to appeal to the First-tier Tribunal if he is still not satisfied. If HMRC fails to complete the review in 45 days (and do not ask for an extension of time), Will must lodge an appeal within 30 days of the time running out (their failure to give a response is treated as confirmation of the original decision).

A review is likely to result in the vacation of all three assessments, but there is an outside possibility that they may try to defend the one for September 2020. The review will have to specify the grounds on which the decision to assess is justified, so at that point it should be considered as to whether it is worth appealing.

Request for information

HMRC must raise an assessment for the December 2020 period no later than 31 December 2024 to satisfy the four year deadline. However, they must also obtain further facts within the 12 months leading up to the assessment. This is an awkward situation for the company: if Will answers their questions, he will validate the assessment. If he delays or fails to co-operate, he could make it impossible for them to raise an assessment, but would have to consider whether that is a proper course of action.

Officers of HMRC have the power to require taxpayers to provide information or produce documents if that is "reasonably required" to enable the officer to check the taxpayer's tax position (para.1 Sch 36 FA 2008). If an informal request does not produce the answers, the officer can issue an "information notice" which specifies a time limit for production (which must again be "reasonable").

The power to require information and documents is not time restricted. Given that the company has lost a case in the Court of Appeal and were therefore on notice that HMRC disagreed with its position and were likely to want to assess in respect of that disagreement, it would be hard to argue successfully that the request for this information was "unreasonable". Even if the accounts department is busy leading up to Christmas, HMRC could make the point that the information should be relatively easy to identify the supplies that were treated as zero-rated, and if they have given several weeks' notice Will cannot claim that the deadline is unreasonable.

Penalties and interest

If the company has to pay VAT for a past period on the basis of an assessment, it will be charged interest from the due date from that earlier period until settlement.

All the returns fall under the penalty regime that requires "careless" or "deliberate" understatement of the VAT liability. While the company had a VAT Tribunal decision in its favour, it could not be said that continuing to treat the supplies as zero-rated was "careless". So it would be possible to resist penalties on that basis.

However, the situation changed when the argument was lost in the Court of Appeal. HMRC can then argue that the company knew that the earlier returns were wrong, and it should have made adjustments accordingly. In March 2024, all the periods that HMRC want to assess were still in time for the company to make a voluntary disclosure to correct the VAT. This is an area in which the rules have changed and there is as yet no case law, so it is hard to be sure about how the courts will view the matter. On the one hand, when the company made the returns they were based on a reasonable view of the law supported by a Tribunal decision; on the other hand, failing to correct them after the Court of Appeal's judgment could be regarded as "deliberate understatement".

On balance, the failure to make the adjustment – effectively, waiting for HMRC to make an assessment, which they have then failed to do – is not likely to be penalised in this way. However, returns for periods which were submitted after the Court of Appeal judgment should certainly be filed in accordance with that judgment, or they would be open to penalties.

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It was pleasing that some candidates (sadly, only a very small minority) could identify a case that was relevant to these facts – the Weight Watchers decision made this a reasonably topical* subject. Dealing with assessments and time limits is always an important practical matter, but it seems that candidates are not comfortable discussing these rules. Overall answers to this question were poor.

*It was topical at the time it was set

A minority of candidates gave a clear and accurate explanation of the time limits – two years, 12 months and four years – and how they interact with each other. Although the better answers identified that the four year time limit ruled out some of the assessments, almost no-one could apply the 12 month rule to the facts. This is an important principle and should be better known. A startling number of candidates did not even refer to the four year time limit (which was fairly well signposted by the raising of an assessment for September 2020 on 28 September 2024).

Candidates should remember an answer only wants relevant information and therefore commenting on the time limits for assessment where fraud and criminal conduct is concerned was not required.

Some candidates were aware of one of the more tricky points that were tested here. HMRC get one year from the knowledge of facts sufficient to raise an assessment. It has been held in court that a court decision is not something that starts the one year clock running – it is not a new piece of information for HMRC, because it only confirms what they thought the law was. It isn't a 'fact' in relation to the situation. They should have raised protective assessments for the periods concerned while they were arguing the case in court. There were some good discussions which suggested that some candidates knew what a protective assessment is.

There were variable answers on the question of 'best judgement' in assessments. One point that is widely misunderstood: the expression is derived from s.73 VATA 1994, not from the court's decision in the Van Boeckel case. That court decision helped us to understand what the statutory expression means in practice. These distinctions are important – if you are arguing a point of law with HMRC, you need to know what the law is, and why.

Bonus marks were given for other reasonable points raised in answers, such as the requirement to pay disputed tax before the Tribunal will hear an appeal (but not while a review is going on), and also the suggestion that the company asks for more time to provide the requested information.

Candidates should be aware that a vague comment such as 'interest will be due' is unlikely to gain any marks (even if the correct statutory reference is given) – it is necessary to give some further details, such as the date that interest will start to accrue and when it will stop.

14. FARMER GILES

1) Farmer Giles

The first question is whether the cash coming in from LFSS should have been put through Farmer Giles' company VAT return. It appears that the activities are kept separate; however, if company assets are used to support LFSS' activities, HMRC could argue that it is an extension of the company's business. In that case, they would assess for output tax on supplies going back four years (and would allow input tax on related costs to be deducted). Penalties are likely to be 30% for careless error under Sch 24 FA 2007, but HMRC might argue that the omission was deliberate with a 70% penalty tariff.

As long as company assets are not used, it should be possible to resist such an argument. The next question is whether HMRC could require registration by a business splitting direction under paras 1A/2 Sch 1 VATA 1994. This seems relatively unlikely as there does not appear to be any artificial separation of activities which are more naturally regarded as one: if Farmer Giles' own land was used, a direction might be sustained, but this appears to be something quite separate from his farming business. A direction would only have effect from the date it is issued.

The third issue is whether Farmer Giles should register LFSS either as an unincorporated association or as a sole trade. It appears to be a business within the definition of s.94(2)(a) VATA 1994 (the provision by a club or association for a subscription or other consideration of the facilities or advantages available to its members), It is not clear whether it has exceeded the registration threshold in the last year (£4,000 x 20 = £80,000; the threshold is £85,000), but it may have done so before that, in particular in the first year when the contributions were higher. If it should have registered and failed to do so, urgent action will be required to minimise exposure to penalties.

On the other hand, there is a strong argument that this is not a business activity at all. It is similar to the facts of the *Lord Fisher* case, because Farmer Giles himself takes part and pays his own contribution. Although it satisfies many of the tests of business activity established in that case, it could be strongly argued that the LFSS is not making supplies for a consideration. There are differences (in particular, the fact that Giles has to buy in and apparently supply on the shooting rights), but these were held to be unimportant in the similar Tribunal case of *EG Harrison* (TC01205). Therefore, any attempt by HMRC to charge VAT on this activity could be resisted.

HMRC has revised its guidance on what constitutes a business activity due to the more recent Court of Appeal decision in *Wakefield College.* In that case a two stage test was given:

1. The activity results in a supply of goods or services for a consideration, and this means there is a legal relationship between the supplier and recipient, and

2. The supply is made for the purposes of obtaining income therefrom.

The criteria in the Lord Fisher case are now only indicators. They can still be used as a set of tools but are not decisive. In this situation, if there is no legal relationship between Farmer Giles and his friends then test 1 is not met. As there is no written constitution, so members are potentially free to leave at any time, this is a good indicator of there being no legal relationship.

Tutorial Note:

It would have been reasonable to start with the business v non-business discussion and conclude non-business based on case law principles.

Credit would also be given for coming to a different conclusion that it is a business activity.

An outline of registration and aggregation could then follow just in case the business argument prevailed.

2) Sir Archie Fettrich

By contrast with Farmer Giles, Sir Archie has treated his hunting activities as business. It appears that he makes a large loss (the cost of the helicopter, even spread over a number of years, must substantially exceed the revenue from selling meat), so HMRC might argue that it is not "economic activity" and therefore does not justify a deduction of input tax.

Applying the principles from *Wakefield College* and using the *Lord Fisher* case as 'tools', these are the indicators that hint towards a business activity:

The turnover is small, but Sir Archie says he hopes to increase it. It is certainly not insignificant and points towards making supplies for a consideration.

The fact that the costs appear likely always to exceed the revenues may count against this being a business. However, it is not essential to make a profit for VAT to be charged and recovered, as long as taxable supplies are made for a consideration. The Courts have held that reliance should not be based on a profit motive.

It appears that the activity is mainly concerned with making supplies for consideration – the sales of meat. HMRC might make something of the fact that Sir Archie does not charge people to take part in the hunting but assistance in the hunting might be worth as much as Sir Archie might otherwise charge.

Overall, it appears that this is a business activity for VAT purposes and input tax is in principle deductible. In the fairly similar case of *Mark Ziani de Ferranti* (TC01288), the Tribunal accepted that input tax on a helicopter was deductible on the basis of zero-rated sales of venison.

There are two other issues which HMRC can raise. The first is the private use of the helicopter. There is no question that a percentage should have been disallowed on the purchase, as the *Lennartz* approach (100% claim upfront) is not permitted for purchase of aircraft (after 1 January 2011). This ought to be notified to HMRC without delay to minimise the exposure to penalties. On the facts stated, the disallowance should be 20% (private use) x 20% x £300,000 = £12,000; there should be a similar disallowance of running expenses since then. Claiming 100% on an asset with private use might not be regarded as 'careless' but 'deliberate behaviour' with a higher penalty rate; unprompted disclosure will only reduce the penalty to zero if the error counts as careless.

The helicopter falls within the Capital Goods Scheme. Differences in private use over a five year period should be reflected in CGS adjustments each year. If 80% of the input tax was originally properly claimed on the basis of an expectation of the private/business split, the actual private use in the year to 31 March 2024 should be compared with this and an adjustment made accordingly in the return to September 2024.

The second point is whether there is a barter transaction with the friends who take part in the hunting for no apparent consideration. They are providing a service to Sir Archie in return for something for which he might charge them. It is unlikely that any valuation of this has been agreed between the parties; using the principles of the *Empire Stores* case, the barter would have to be valued according to the costs which Sir Archie is prepared to pay out in order to obtain the services. It is not clear that there are such costs (as the business does not bear any expenses for the participants), so it would be hard for HMRC to sustain an assessment based on barter.

Examiner Note:

There were a large number of points and issues in this question and more marks were available on the marking guide than the 15 maximum for the question. A good score would be obtained by a candidate who identified a range of issues and discussed them sensibly.

It was not necessary to identify and discuss everything that appears in the model answer or write about them so fully.

MARKING GUIDE

TOPIC	MARKS
1) Farmer Giles	
Part of farming company business?	1
Business splitting direction?	1
Sole trade/association	1
Mention of s.94	1
Registration threshold considered	1
Case Law and HMRC guidance	2
Tests in Wakefield College	2
Bonus mark for mention of other relevant cases	1
Max	9
2) Sir Archie Fettrich	
Basic issue: economic activity or not?	1
Consideration of tests Conclusion – either way, as long as justified by discussion	1 1
Bonus mark for mention of de Ferranti case	1
Private use of helicopter identified as a problem	1
Correct treatment: disallowance (not Lennartz) and CGS	1
Discussion of barter	1
Max	6
TOTAL (MAX)	**15**

Examiner's report:
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There were a number of issues which candidates could identify and comment on in each of the two scenarios that would have earned marks. Too many candidates failed to identify the full range of issues, and too many made basic mistakes.

Several candidates were aware of the cases (Harrison and de Ferranti) which were highly relevant to these situations. Not all could accurately recall the outcomes of those cases – both went in favour of the taxpayers and would have been helpful to the situation in this question.

The section on the helicopter was generally well done, with most candidates correctly stating that Lennartz accounting is no longer possible and noting that the capital goods scheme should be applied. However, only a minority followed through to note that the individual had therefore overclaimed £12,000 of input tax, and hardly anyone suggested that something should be done about this – it is too large for an adjustment through the VAT account, so a voluntary disclosure would be essential.

Several commented on the advantages of voluntary registration for the first taxpayer. It ought to be obvious that the output tax liability would exceed the input tax recoverable – the business just about breaks even, it has non-VATable costs, and the customers cannot recover VAT charged to them. Surely a VAT advisor must understand that basic point – it cannot be advantageous to be registered. The contrast with the second taxpayer, who has zero-rated outputs and therefore wants to be able to treat the activity as business, ought to be obvious.

15. FRESCO PLC

1) Payments on account

The amount of POA is set by SI 1993/2001. The reference period for the year to 31 March 2025 will be the four quarters to 30 September 2023 (art.11(a)(a)).

The total payments on returns for those four quarters is £4.4m, so the POA due on 31 March 2025 was: £4.4m/24 = £183,333

2) Revising payments on account

Under SI 1993/2001 art.13, POA can be reduced if the VAT liability for any four quarters ending after the end of the reference period is less than 80% of the liability for the reference period.

The four quarters to 31 March 2024 have a total liability of £3.4m, so the company could apply to have the POA due on 31 May 2024 reduced to: £3.4m/24 = £141,667

As long as the application is made in sufficient time for HMRC to approve the reduced payment before 31 May, the reduction can apply immediately after their approval.

3) Penalties

The late submission of the return in September 2023 might have resulted in HMRC issuing a penalty point for the late submission. There is no financial penalty until a set number of penalty points are awarded (for quarterly returns, this is four).

The late payment of a POA due on 31 March 2024 could have resulted in a penalty. However, no financial penalty will be imposed because the payment was made within 15 days of the due date. The information suggests that the actual return was filed on time. If this was not the case then a penalty point might be awarded by HMRC, but as above no financial penalty applies until four penalty points have been awarded. This means four returns have been filed late. If this return is late then two penalty points are now recorded.

Examiner Note:

"Payments on account" is a non-core area of the syllabus. Accordingly, time has been allowed in this question for the candidates to find the rules in SI 1993/2001 and apply them.

MARKING GUIDE

TOPIC	MARKS
1)	
Reference period	1
Calculation	1
Correct statement of rules/reference to legislation	1
Sub-total	3
2)	
Explanation of rule	1
New reference period	1
Calculation	1
Application	1
Sub-total	4
3)	
Consideration of penalty rules rules for Sep 2023 return – penalty point	1
Consideration of penalty rules for March 2024 return – no financial penalty for late payment as within 15 days, return late? – if so second penalty point	2
Sub-total	3
TOTAL	**10**

Examiner's report:
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The first seven marks on this question were for a non-core area of the syllabus, so time was allowed for candidates to look up the regulation and remind themselves of the rules. Needless to say, this required the candidates to know that there would be a regulation and to have some awareness of the rules which could be refreshed. Some candidates appeared never to have heard of POA for large traders; others were unable to identify the significance of the 'reference period' for calculating POA, without which the difference between part (1) and part (2) was impossible to see.

16. JANE AND HORACE

Conversion of the Haycroft and Burford barns

Contrary to what the builder has said, provided that the necessary planning consents/building approvals for the conversion works have been obtained and they each result in essentially a self-contained dwelling, they will be subject to VAT at the reduced rate of 5%, as opposed to standard rated. The fact that the consent relating to Burford Barn restricts its use to the provision of accommodation to a farm worker will not preclude VAT relief.

VAT incurred on Burford Barn will be recoverable in full since the building will be used in the course of the partnership's business.

The gift of the freehold interest in Haycroft Barn to Lizzie will represent a deemed zero rated supply by the partnership of a converted dwelling, and accordingly it will be entitled to recover in full VAT associated with the supply.

In the absence of any form of consideration passing from Lizzie to Jane and Horace for the converted barn, there will be no charge to SDLT.

Alternatively, the unconverted barn could be taken out of the partnership. The conversion could then be undertaken privately, and any VAT incurred on the conversion would be recovered via the DIY housebuilder scheme.

Windrush Barn

The leases will be VAT exempt, and, in principle, VAT incurred on expenses directly and indirectly associated with these supplies ("exempt input tax") will be irrecoverable.

However, the legislation provides an administrative easement which allows a VAT registered trader to recover in full exempt input tax which is, on average no more than £625 p.m. (£1,875 a VAT quarter) and does not exceed 50% of all input tax incurred in a VAT quarter. Invariably VAT on expenses do not accrue evenly over a longer period, so the legislation allows taxpayers at the end of their "tax year" (explained later) to recalculate the exempt input tax incurred and if it is a maximum £7,500 (£625 x 12), to recover the tax in full.

Where the annual de minimis limit of £7,500 is met, but exempt input tax has not been claimed for the VAT accounting periods falling within the tax year because the monthly/quarterly de minimis limit were breached, this tax may be recovered in full by making an entry either on the taxpayer's VAT return for the final accounting period of the tax year, or on its return for the first accounting period in the following tax year. Conversely, where a taxpayer has met the de minimis limit in a VAT accounting period(s) within a tax year, but over the full tax year the annual de minimis limit of £7,500 is breached, exempt input tax previously claimed must be refunded to HMRC.

The partnership's tax year will be the 12 months to 31 March unless it has agreed another period with HMRC. In the first tax year in which a VAT registered person incurs exempt input tax, the annual de minimis limit of £7,500 is pro-rated - assuming the builder renders his first invoice in respect of Windrush Barn in November 2024, the annual de minimis limit for the partnership's tax year 2024/25 will be £3,125 (£7,500 x 5/12).

During the partnership's tax years 2024/25 and 2025/26 it will not be making any exempt supplies, so the only exempt input tax will be that arising on the builder's invoices for the works to Windrush Barn. However in the tax year 2026/27, it will be making exempt supplies to the value of £30,000, as well as taxable supplies. In that tax year, the exempt input tax incurred by the partnership will include not only the VAT charged on the builder's Windrush Barn invoices but also (a) VAT on expenses directly relating to securing tenants, for example, agents' and solicitors' fees and (b) a small amount of VAT on the

partnership's overhead expenses which may be said to be fairly and reasonably attributable to the exempt supplies made in 2026/27.

VAT incurred on the partnership's general overheads is of the order of £12,000 p.a. Given that the value of VAT exempt annual rents from the letting of the units is expected to be £30,000 in 2026/27, and taxable supplies made by the partnership will be of the order of £2,000,000, the proportion of taxable supplies to the total value of all projected supplies is rounded up to 99% (ie £2,000,000/2,030,000), so exempt supplies are 1%. On this basis, the VAT arising on the partnership overhead expenses which could be said to be fairly and reasonably attributable to the partnership's exempt supplies in 2026/27 will be, on average, £120 p.a. (£30 per quarter).

Proceeding on the basis that the builder invoices the partnership for work done on Windrush Barn in line with the schedule set out, by way of an illustration of the rules outlined:

Quarter/ tax year to:	"Exempt input tax"			De minimis limit	Exempt input tax recoverable?	Adjustment to VAT return
	Overhead expenses	Builder's charges	Total			
	£	£	£	£		£
Dec		(5k x 20%) 1,000	1,000	1,250	Yes	
March 25		2,000	2,000	1,875	No	
Tax year 24/25		3,000	3,000	3,125	Yes	Reclaim 1,875
June		1,600	1,600	1,875	Yes	
Sep		2,400	2,400	1,875	No	
Dec		2,000	2,000	1,875	No	
March 26		4,000	4,000	1,875	No	
Tax year 25/26		10,000	10,000	7,500	No	Repay 1,600
June	30	3,000	3,030	1,875	No	
Sep	30	0	30	1,875	Yes	
Dec	30	0	30	1,875	Yes	
March 27	30	0	30	1,875	Yes	
Tax year 26/27	120	3,000	3,120	7,500	Yes	Reclaim 3,030

Although the de minimis limit will be met in the VAT accounting period ending 31 December 2024, it will be breached in the next quarter ending 31 March. However, when the adjustment for the tax year 2024/25 is made, the tax previously disallowed in the March quarter may be reclaimed when the partnership submits its final VAT return for the year.

Although on the face of it, the majority of the VAT to be incurred on Windrush Barn will be irrecoverable, all is not lost. As the tax point of the builder's services in relation to the Barn is the earlier of payment or the issue of a tax invoice, should he be prepared to vary the tax points, the de minimis limits could be met. For example, if the builder were to delay invoicing say, £15,000 of his March 2026 invoice until June 2026, although the exempt input tax on the greater invoiced sum would not be recoverable that quarter, it would become recoverable when the 2026/27 adjustment came to be made.

While the rules are complex, by careful attention to detail, the partnership may be able to recover VAT of £16,000 which may otherwise be lost.

The analysis above is premised on the basis that the builder will issue separate invoices for his work. On the other hand if he were to issue a single invoice each month for the work done to all the barns without distinguishing the quantum relating to each building, under general principles the VAT charged would fall to be treated as a general overhead, and given that the partnership would not be making exempt supplies in the tax years 2024/25 and 2025/26 and the proportion of exempt supplies to the total value of supplies made in 2026/27 would be just 1%, the partnership would be able to recover all of the input tax incurred on the builders' works. Although there is anti-avoidance legislation which overrides the application of what is known as the standard partial exemption method, it will not apply here because the level of exempt input tax claimed is insufficiently high to trigger its application.

Finally, turning to SDLT, given that the net present value of the rents payable over the terms of the leases will not, on the figures mentioned, exceed £150,000, SDLT will not be payable by the lessees.

Tutorial Note:

Annual calculations would have been given equal credit to the quarterly calculations given the time constraints in the question.

MARKING GUIDE

TOPIC	**MARKS**
Haycroft and Burford Barns	
(a) identifying the liability status of the builder's services on works to Haycroft and Burford Barns	1
(b) recovery of VAT charged on Burford Barn	1
(c) identifying deemed zero rated supply of Haycroft Barn and right to claim associated input tax	2
(d) SDLT treatment of transfer of freehold of Haycroft Barn.	1
Windrush Barn	
Application of de minimis limits to input tax incurred on Windrush Barn:	
(a) implications for partnership of making exempt supplies and the requirement that it attribute input tax;	1
(b) identifying monthly and annual de minimis limits and tests	1
(c) application of de minimis limit to quarters in 2024/25	1½
(d) application of de minimis limit to quarters in 2025/26 and 2026/27	2½
(f) longer period calculation for 2024/25 and how adjustment to be effected (NB candidates must display knowledge of how the de minimis limit for 2024/25 is arrived at - no marks are to be awarded if a candidate assumes that it is £7,500)	2
(g) longer period calculations 2025/26 and 2026/27 on the basis that payment schedule is maintained and how the adjustments are to be effected	2
(h) identifying variation to payment schedule to ensure full recovery of all input tax incurred	2
(i) identifying option of treating all VAT incurred on builder's invoices as non attributable and the application of the over-ride	2
(j) application of SDLT to leases	1
TOTAL	**20**

17. AXCESS

Exemption - welfare services

Under UK VAT law, the provision of welfare services by a charity is exempt from VAT by virtue of item 9, Schedule 9, VATA 1994. “Welfare services” are defined in note 6 of Group 7 as “services directly connected with (a) the provision of care ... or instruction designed to promote the physical or mental welfare of ... disabled persons or (b) the care or protection of children and young persons”.

The equivalent provisions under EU law are contained in Article 132(g) and (h) of the Principal VAT Directive. They extend exemption to “the supply of services ... closely linked to welfare and social security work” and “the supply of services ... closely linked to the protection of children and young persons” by bodies governed by public law - they include charities.

While the Courts interpret the exemptions narrowly, the CJEU in *EC v Germany* [2002] *EUECT* Case C-287/00 ruled that the exemptions should not be interpreted especially narrowly if it would result in an increased cost in the delivery of social services.

Exemption under EU law is wider in its scope than UK law, covering as it does, all services linked to social security work, as opposed to care, etc services. Although the UK Courts were required to interpret UK VAT law in a manner which made it consistent with EU law until 31 December 2020, the position is less clear from 1 January 2021. Where a point has been the subject of a CJEU decision prior to 1 January 2021 this will broadly continue to apply in the UK. Accordingly, it is likely that the EU exemption will apply and applies to all services supplied by a charity which are directly linked to social security work.

In addition to the above, in the 2019 FTT case of *RSR Sports,* a school holiday camp was held to be exempt childcare in item 9 and the services in paragraph 1 have the same characteristics.

The services described in paragraphs (1) and (2) both appear to qualify for exemption, although under a strict interpretation of UK law, exemption probably would only extend to the services described in paragraph (1). Should the value of the contract relating to “sibling days” be significant, there may be merit in asking HMRC to confirm in writing that the service is VAT exempt on the analysis set out above.

Development of database

Although supplies by a charity of “welfare advice or information” is chargeable to VAT at the reduced rate (Group 9, Schedule 7A, VATA 1994) - here it seems doubtful that AXcess is supplying such a service, but rather it is providing consultancy services. If so, these services will be chargeable to VAT at the standard rate. On the face of it, VAT charged by AXcess will be reclaimable by the LA under the provisions of s33, VATA 1994.

Recovery of VAT on works to school buildings

The provision of education by, among other entities, a school (as defined in the Education Act 1996) or essentially a non-profit making body which applies surpluses arising from its educational activities in furtherance of them, is VAT exempt - VATA 1994, Schedule 9, Group 6. Accordingly, were AXcess to deliver the service, its service would be exempt, and it will be unable to recover VAT arising on the proposed works.

There are two alternative mechanisms perhaps open to AXcess:

1) the LA contract for the works to be carried out before the school is transferred to AXcess and the works are funded by AXcess indirectly by say, an adjustment being made to the payments that it would otherwise receive for the delivery of the services on the LA's behalf. Under this proposal, the LA may be able to recover the VAT charged under the rules pertaining to LAs, but there are likely to be a number of technical impediments to overcome and intuitively the LA would probably not be keen to proceed on this basis unless it was the only option open to it;

2) as the LA has a statutory responsibility to provide these educational services, all VAT incurred by it will be recoverable under the terms of s.33 of the VAT Act. That being so, instead of AXcess supplying the educational services, they could be supplied by a trading subsidiary which does not have "eligible body" status.

In these circumstances, its services will be standard rated, as opposed to exempt, thereby allowing the trading subsidiary to recover in full VAT on expenses associated with the delivery of the service. It is essential that the trading company has the necessary human and technical resources to provide the service. While HMRC may invoke the principle abuse of law to strike down the arrangements, this type of arrangement has been adopted by other charities and HMRC officers have gone along with them. In any case, it is doubtful whether the principle of abuse of law would necessarily apply in these circumstances.

MARKING GUIDE

TOPIC	MARKS
Identifying scope of VAT exemption on welfare services:	
(a) item 9, Group 7, Schedule 9 VATA 1994	1
(b) "welfare services" and case law	1
(c) EU law Art 132(g) & (h) of the Principal VAT Directive	1
(d) UK law and when to give effect to EU law and, on the face of it, EU law is wider in its scope	2
(e) Conclusion on scope of exemption on welfare services	2
VAT status of services relating to assistance in developing a database and recovery of tax charged by LA	2
Recovery of VAT on building works:	
(a) Supply of educational services by AXcess exempt with no right to recover associated input tax	2
(b) Identifying solutions which enable AXcess to proceed with bid, for example: (i) LA undertakes the works and recovers the VAT; (ii) Provision of services through wholly owned subsidiary of AXcess which does not have eligible body status. (up to 4 marks to be awarded at the discretion of the examiner based on the solutions offered by candidates and their likely efficacy)	4
TOTAL	**15**

Examiner's report:
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(a) only a minority of candidates identified that the services set out in paragraphs (1) and (2) were possibly exempt as the provision of "welfare" services and then went on to analyse the scope of the exemption. No candidates considered whether the equivalent provision in the Principal VAT Directive allowed AXcess to exempt services supplied in relation to the "sibling days". Credit was given where candidates identified that the services might qualify for exemption as educational services. Similarly credit was given where candidates considered - and concluded - that the supplies might be outside the scope of VAT, with discretionary marks awarded for a full analysis as to why this could be a tenable alternative.

(b) no candidate identified that the supply in paragraph (3) could be subject to the reduced rate (Group 9, Schedule 7A, VATA 1994)

(c) the final part of the question was not handled well - possibly on account of time pressure.

18. OFCAM TUTORS LTD

Ofcam Tutors Ltd ("Ofcam")

Ofcam wants to act as an intermediary (or agent), rather than a principal supplying educational services utilising the resources of the tutors engaged by it. As an intermediary the consideration for its service would be restricted to the commission earned.

1)

The addition of VAT on tuition fees will represent an additional cost for students (or, more particularly, their parents). Since Ofcam is not an "eligible body" ie a school, college, university, or non-profit making body supplying educational services, etc, tuition supplied by it as a principal will be chargeable to VAT at the standard rate; hence introductory tuition sessions supplied by Ofcam as a principal will be chargeable to VAT.

In contrast, private tuition supplied by a tutor acting independently of Ofcam is exempt from VAT. Accordingly, there is a commercial imperative that Ofcam be viewed as acting as an intermediary in bringing together students and tutors for the provision of private tuition, with commission earned representing the consideration for its service. Although this service will be standard rated, Ofcam will only become liable to register for VAT as and when the aggregate of its commission and fees earned from introductory sessions exceeds the compulsory registration limit. Even if VAT is chargeable on Ofcam's commission, the financial impact on its customers will not be as significant.

2)

In determining whether Ofcam is acting as an intermediary, HMRC will have regard to the following factors:

- the degree of control that it exercises over the activities of tutors;
- the terms of engagement between Ofcam, the student/parent and tutors; and
- the extent to which tutors might be seen as an integral part of Ofcam's business.

On the basis of the information supplied (and subject to how the arrangements are conducted in practice) Ofcam does not exercise significant control over the activities of tutors. Furthermore, cases suggest that the degree of control exercised by a party over another is of marginal relevance - see, for example, *Spearmint Rhino Ventures (UK) Ltd* [2007] EWHC 613 (Ch).

Provided that the terms of business reflect the economic and commercial reality of the transactions between the parties, they are an important consideration, but not determinative - *Reed Personnel Services Ltd* [1995] STC 588. Where the terms do not reflect the economic and commercial reality, they are to be discounted – eg see *Paul Newey* Case C-653/1 and *Wilmslow Financial Services FTT [2020] case.* In considering the contractual terms, the terminology used in the documents, for example, "agent", "intermediary" "commission" will not determine the issue; instead it is necessary to look at the facts which point to, and against agency and reach a balanced conclusion.

While there are features in the arrangements which point to Ofcam acting as an intermediary or agent, for example, the requirement for tutors to provide materials, that tutors offer their services as self-employed contractors, the freedom of tutors to take on as many assignments as they wish (whether or not through introductions effected by Ofcam); nevertheless on the basis of the draft documents and proposed arrangements, HMRC is more likely than not to consider that tutors are not supplying their services independently to students, but rather are acting on behalf of, or for the account of, Ofcam. This is because:

a) Under the client (student) terms of business, Ofcam has sole discretion to accept a student as a client. This appears to be inconsistent with the proposition that Ofcam is acting as an intermediary. If Ofcam were to act as an intermediary, the decision to take on a student would ultimately rest with the tutor;

b) Ofcam provides introductory tuition sessions as a principal - it tends to reinforce the proposition that all tuition services are supplied by it as a principal;

c) the amount of the commission is undisclosed. It is not a fixed fee but calculated as an uplift on the hourly rate;

d) Tutors cannot invoice or collect payment from students, but must invoice Ofcam for their services;

e) There is no identifiable fee for the administrative services supplied by Ofcam to tutors - rather it is wrapped up in the uplifted fee charged to students;

f) Tutors' fees collected from students are treated as Ofcam funds.

CIOT MARKING GUIDE

TOPIC	MARKS
Identifying commercial rationale for agency status and VAT liability of commission earned	2
VAT status introductory sessions supplied by Ofcam Tutors Ltd as principal	1
Factors to be taken into account in considering agency status: Degree of control exercised over tutors by Ofcam (1 mark for identifying factor, and further mark for any supporting case law principles)	2
Importance to be attached to contractual terms (2 marks for discussion, with a further mark for any supporting case law principles)	3
Factors identified from material which support or militate against Ofcam being an agent/intermediary (Given the nature of the question and answer, the examiner will be flexible in awarding marks here, with 1 mark be awarded for any reasonable factor identified by candidates, subject to a maximum of 6 marks)	6
Conclusion	1
TOTAL	**15**

Examiner's report:
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This question was generally handled well by candidates with a majority securing a pass mark.

Too many candidates lost valuable time in considering whether Ofcam Tutors Ltd might exempt its supplies as educational services provided by an "eligible body". They received no marks for such an analysis as the question made it clear that it did not have eligible body status.

Although the question clearly sign posted that candidates should consider whether, on the basis of the features set out in the question, Ofcam Tutors Ltd would be making supplies as a principal or agent, a significant number of candidates didn’t address the issue head on, but instead analysed whether the tutors would be acting independently of Ofcam Tutors Ltd, focusing on the rulings in Empowerment Enterprises Ltd and allied cases. This approach limited the number of marks that could have been secured.

19. DWC PRINTERS LTD (MAY 2015)

Quantification of relief due

1) Target Enterprises Ltd

Invoice Reference	Amount Due	Payment Allocated	Amount Outstanding	Bad Relief (1/6 outstanding sum)
	£	£	£	£
130555	2,400	(2,400) (note (ii))	Nil	
140126	3,600	(3,600) (note (i))	Nil	
140137	4,000	(4,000) (note (ii))	Nil	
140466	1,200	(776) (note (ii))	424	71
140467	500	(323) (note (ii))	177	
150102	3,000			—
Claim on Target Enterprises Ltd debts - period 06/24				71

Notes on claim:

a) DWC's claim is limited to the amount outstanding ie the value of the supplies made, less payment received by DWC. To quantify the amount outstanding, where more than a single supply has been made, generally payments should be allocated to the earliest supply first, save where the customer has allocated payment to a particular supply and the supply has been paid for in full; in these circumstances, the payment must be attributed in accordance with the customer's instructions. Where more than one supply is made on the same day, payments are to be attributed equally across all supplies made on that day. Applying these rules to the situation here:

i) the payment of £3,600 should be allocated to invoice 140126 to reflect the customer's instructions;

ii) the payment of £7,500 must be allocated on a first in, first out basis and, in the case of supplies made on the same day, pro-rated between them:

	£
Invoice 130555	2,400
Invoice 140137	4,000
Invoice 140466	776 (1,100 x 1,200/1,700)
Invoice 140467	324 (1,100 x 500/1,700)

b) A claim cannot be made until six months has elapsed from the later of:

- the date of the supply; and
- the date when the consideration became due and payable to the supplier.

The due date on invoice 150102 is 17/3/2024. Therefore the earliest that bad debt relief may be claimed is 17/9/2024. If this invoice is still outstanding when preparing the September return then a claim should be made on that return.

2) Arrow Holdings Ltd

The sum outstanding is £400, albeit it relates to the tax in dispute. Accordingly, bad relief is restricted to £67 (£400 x 1/6) (under the principles established in *Enderby Transport).*

3) Divine Homes

a) Bad debt relief is restricted to VAT on the debt, net of set-off exercised (the set off exercised constitutes part payment) ie £400 (£2,400 x 1/6).

b) DWC reclaimed input tax of £200 on Divine's Home's invoice on its March 2023 return. Regulation 172H of the VAT Regulations 1995 (SI 1995/2518) requires a taxpayer to adjust its VAT return by making a negative entry in Box 4 where it has not "paid" any part of the consideration due within six months of the later of:

- the date of the supply; or
- the due date for payment.

Accordingly where DWC has not "paid" the whole or any part of the consideration due, it should normally have included an adjustment on its December 2023 return. Although DWC has not transferred funds to Divine Homes in settlement of the debt, nevertheless the exercise of set-off should be construed as "payment" for the purposes of the regulation in the context of the application of the bad debt scheme. Accordingly no adjustment is required under regulation 172H.

4) City Cycles

A claim must be made within four years and six months of the later of:

- the time of the supply;
- the date when the amount became due and payable.

a) Given that the debt for £3,600 was due on 4 March 2020 under DWC's terms of business, a claim reflected on its June 2024 return will be in time. The relief will be £600 (£3,600 x 1/6).

b) A claim based on the earlier debt of £2,400 is time barred.

5)

DWC makes a claim by entering the amount refundable in Box 4 of the VAT return for the VAT period in which the entitlement to the claim arises, subject to the overriding time limit. The total relief that may be claimed on the debts is £1,138.

Dividend in specie

There should not be any VAT implications on the distribution in specie of a residential property. Ordinarily the movement of goods for no consideration is a deemed supply but residential property is within the Schedule 9 Group 1 exemptions. VAT would only become due if the dividend specie involved opted commercial property.

A distribution of property to a shareholder is generally exempt from SDLT because there is no chargeable consideration (FA 2003 para 1, Sch 3).

However, if the shareholder also assumes a mortgage or loan attached to the property or the property is distributed to discharge a debt to the shareholder, this will represent consideration and SDLT would be based on the amount of the debt transferred or discharged (FA 2003 para 8, Sch 4).

To benefit from the SDLT-free treatment, it is important to ensure that the legal documentation for the distribution in specie is prepared correctly. The dividend resolution must specify that the property is being transferred as a distribution in specie.

If the resolution provides for a cash dividend equal to the market value of the property, this will create a pre-existing debt. Consequently, the transfer of the property to the shareholder would effectively discharge that debt, which would again constitute chargeable consideration for the purposes of FA 2003 para 8, Sch 4, and create an SDLT charge.

In addition, if the individual shareholder already owns a residential property, and the consideration is £40,000 or more, the rates of SDLT are increased by 3%.

CIOT MARKING GUIDE

TOPIC	**MARKS**
Calculation of relief:	
1) Target Enterprises:	
(a)(i) Allocation of payment of £3,600	1
(a)(ii) Allocation of payment of £7,500	2
(b)Quantification of relief	1
2) Arrow Holdings Ltd - quantification of relief (bonus mark for supporting case law, for example, Enderby Transport VTD 1607; Simpson & Marwick [2013] CSIH 29	1
3) Divine Homes;	
(a) quantification of relief;	2
(b) adjustment required under regulation 172H?	1
4) City Cycles:	
(i) Identifying claims in time	2
5) Effecting a claim and conclusion	1
Notes accompanying:	
1)(a) Rules pertaining to allocation of payments	1
1)(b) When a claim may be effected;	1
3)(b) Repayment of input tax where consideration not paid	1
4) Time limit on a claim	1
Dividend in specie:	
1) VAT Exempt deemed supply (or no deemed supply as no input tax recovered)	1
2) SDLT	
Exempt if no consideration (FA 2003 Sch 3 Para 1 gift)	1
Debt can create consideration under FA 2003 Sch 4 Para 8	1
Mortgage taken over or discharging debt to shareholder would be consideration	1
Dividend resolution must state property in specie rather than a cash amount	1
Rates increased by 3% if additional residential property	1
Max	4
TOTAL	**20**

Examiner's report:
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This question was done well, with a very significant proportion of candidates achieving the pass mark. However, it also appears that a number of candidates spent too long on this question and suffered as a result on later questions.

No candidate identified the requirement that payments must be pro-rated across all supplies made on the same day, irrespective of their liability. Furthermore, as some candidates assumed, the regulations do not permit a trader to discount zero rated - and, by extension, exempt - supplies when allocating payments. Despite the question being directed at the quantification of bad debt relief which could be secured by DWC Printers Ltd, candidates ignored this aspect and instead concentrated on the DWC's ability to issue a credit note, seeking a clearance from HMRC, etc where Arrow Holdings Ltd had settled part of debt, but refused to pay the VAT on the basis that it had been charged incorrectly (there was no suggestion in the question that there was any doubt over the VAT status of the supply).

20. AW INVESTMENTS LTD (MAY 2015)

Computation of input tax reasonably recoverable and accompanying notes:

1) Calculation of the recovery rate for the year to 31 March 2024 based on the standard method:

Summary of income:	Taxable	Exempt	Total
	£	£	£
Estate agency and property management fees	1,500,000		1,500,000
Interest on client deposits (note a)		18,000	18,000
Subletting income (note a)		Nil	Nil
Sale of investment property (note b)		1,300,000	1,300,000
Total	1,500,000	1,318,000	2,818,000
Recovery rate (rounded up to the nearest whole number)			54%

Notes on computation of the recovery rate ("reg." refers to VAT Regulations 1995 SI 1995/2518):

a) Interest on client deposits cannot be excluded as incidental - the investment of these funds are an extension of the property management business (reg.101(3)(b) (see *Regie Dauphinoise* Case C- 306/94*).* However, subletting income may be regarded as incidental - it does not represent a discrete business (or an extension of an existing activity) and the supply utilises insignificant amounts of the residual input tax;

b) The sale of the investment property cannot be discounted either on the basis that it represents a capital item used by the business (it is stock for this business) or that it is an incidental real estate transaction; it is a discrete business activity - see *Nordania Finans & BG Factoring* Case C-98/07 and *NCC Construction Denmark A/S* Case C-74/08.

2) Residual input tax recoverable under standard method - £142,560, being 54% of the following residual input tax:

a) Estate agency and property management business expenses - £80,000 (20% x 400k);

b) Birmingham development expenditure - £88,000 (£8k + £70k + £10k) ie VAT on costs of 40k + 350k + 50k;

c) Senior management team expenses - £96,000 (£12k + £24K + £60k) ie VAT on costs of 60k + 120k + 300k.

Input tax on sale of investment property (£8,000) is irrecoverable as it is exempt input tax.

3) Computation of input tax recoverable on the basis of "use" (see note 3(b)):

	Residual input tax	"Use"
	£	£
Estate agency and property management business expenses:	80,000	
As a proxy for use, apportion this residual input tax by reference to the value of taxable supplies to the total value of supplies, discounting subletting income (£80,000 x 99% ie 1,500,000/1,518,000)		79,200
Birmingham development:	88,000	
As a proxy for use, apportion this residual input tax by reference to the value of future taxable rents to total rents (£88,000 x 66% ie 425,000/650,000)		58,080
General overhead expenses of senior management team, excluding VAT incurred on acquisition costs:	72,000	
As a proxy for use, apportion this residual input tax by reference to the value of taxable supplies to the total value of supplies (including the value of future supplies on the development site) (£72,000 x 56% [£1,500,000 + £425,000}/[£2,818,000 + £650,000])		40,320
Input tax on acquisition costs (£120,000) of estate agency and property management business:	24,000	
As a proxy for use, apportion this residual input tax by reference to the value of taxable supplies to the total value of supplies of the estate and property management business ie 99%		23,760
Total		201,360

Notes:

a) The partial exemption regulations are premised on the identification and attribution of input tax. Accordingly the company's accounting records should identify input tax used exclusively in the making of taxable or exempt supplies: the former ("taxable input tax") is recoverable in full, the latter ("exempt input tax") is not. In the absence of an agreed partial exemption special method, the input tax that cannot be so attributed ("residual input tax") must be pro-rated by reference to the value of taxable supplies to the value of all supplies made in the accounting period (or for the purposes of the annual adjustment, the "longer" period) - reg. 101(2)(d);

b) Where a partly exempt business has not previously incurred exempt input tax - as is here - residual input tax may be reclaimed by reference to the "use" to which input tax incurred is used in making taxable supplies, rounded up to the next whole number. "Use" is not defined, but whatever proxy is adopted to represent use, it must result in a fair and reasonable apportionment of residual input tax - reg. 101(2) (e);

c) Input tax on costs relating to assets acquired by way of a transfer of a business as a going concern must be attributed by reference to the intended use of the assets - see *UBAF Bank Ltd* [1996] STC 372; hence VAT on acquisition costs falls to treated as residual input tax;

d) As this is the first year of registration the company has the option of preparing their partial exemption calculations based on the standard method or a use based method. On the basis of these calculations, the company should apportion input tax by reference to use, rather than utilise the standard method as this optimises the input tax recovery;

e) In the above year, under the standard method, the company's recovery rate was disproportionally affected by the sale of its investment property. However, in the absence of this distortion in 2024/25, the standard method might result in additional recoverable input tax compared to a method based on use, (however the override provision needs to be considered).

Against this background, obtain indicative income and expenses for 2024/25 and discuss with the company the merits (or otherwise) of seeking HMRC's approval of a special method along the lines of the methodology set out in section (3).

Should the company be minded to seek a special method, its proposal must be supported by illustrative calculations and a declaration that the method fairly and reasonably reflects the extent to which input tax will be used in the making of taxable supplies. A special method will normally only take effect from the commencement of a tax year ie 1 April, therefore comparative exercise should be undertaken as soon as possible.

CIOT MARKING GUIDE

TOPIC	MARKS
Computation of input tax recoverable under standard method:	
Calculation of recovery rate, including rounding up to nearest whole number	1
Treatment of interest on client deposits and subletting of part of the Head Office as incidental (½ mark for each item), and accompanying note 1(a), including reference to supporting case law (2 marks)	2
Treatment of proceeds of sale of investment property (1 mark) and accompanying note 1(b), including supporting case law (1 mark)	2
Identifying residual input tax which falls to be apportioned, including identifying as exempt input tax VAT incurred on sale of investment property (up to 1 mark for each category identified in answer, subject to a maximum of 4 marks)	4
Calculation of input tax recoverable under the standard method	1
Computation of input tax recoverable on the basis of use (Examiner's note: given the nature of the question, it is expected that a range of methodologies will be put forward by candidates which differ from the model answer. Accordingly discretion will be exercised when awarding marks so long as the suggested basis of apportionment arguably results in a fair and reasonable apportionment of input tax based on "use"):	
Option to apportion input tax by reference to "use" under reg. 101(2)(e) - note 3(b)	2
Calculation of total input tax recoverable on the basis of "use" (any reasonable basis of apportionment will be accepted, with 1 mark to be awarded for the categories of residual input tax identified in the answer)	4
Marks allocated to notes not identified elsewhere in marking schedule:	
Requirement for attribution of input tax - note 3(a)	1
Treatment of input tax on acquisition costs relating to a TOGC - note 3(c))	1
Consideration of methodology which should be adopted in following year	2
TOTAL	**20**

Examiner's report:
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This question called for a calculation of input tax fairly recoverable by AW Investments Ltd, which was making (and intending to make) exempt supplies.

The following matters were not fully addressed by the majority of candidates:

1) the inclusion (or otherwise) from a turnover based calculation of firstly, interest earned on client deposits; secondly, income derived from the subletting of part of the offices and thirdly, proceeds from the sale of the investment property;

2) given that the company had not previously incurred exempt input tax, that it could deduct non-attributable input tax by reference to "use" if the standard method failed to produce a fair and reasonable basis of apportionment (which was always likely to be the case in relation to development costs incurred. Where candidates came to the same conclusion by applying the override rules, they were given credit).

21. THE WEMBURY GROUP (MAY 2015)

Fund management services are standard rated for VAT purposes unless subject to a specific exemption. UK VAT law specifically exempted from VAT the management of a number of different fund vehicles (eg Authorised Unit Trusts). However, UK VAT law did not previously contain any exemption for the management of pension schemes.

In contrast, EU VAT law exempts from VAT the 'management of special investment funds' (SIFs). A number of cases before the CJEU considered the interpretation of this exemption with regard to pension schemes and resulted in HMRC formally aligning the law in 1 April 2020 by virtue of SI 2020/209.

As the law essentially confirms the CJEU case law, the management of certain pension funds is exempt and where the conditions are met, the management of them has always been exempt (see more on this below for retrospective action).

Defined Benefit ('DB') pension scheme

Management of the scheme

The case of *Wheels Common Investment Fund Trustees and Others (C-424/11)* considered the VAT treatment of management of a DB pension scheme. The judgment in this case concluded that for a fund to fall within the scope of the exemption it should be comparable to funds already covered by the exemption (eg UCITS compliant funds). To achieve this, the fund would need to have the following characteristics:

- The capital of the fund should be raised from the public;
- The capital of the fund should be invested collectively; and
- The fund invests in transferable securities following a policy of spreading risk.

Critically, the CJEU found that DB pension schemes fail to meet the first of the above criteria as DB pension schemes invest capital provided by the employer to meet its own obligations to pensioners. As such, the beneficiaries do not bear the risk on the investment; the employer does. Consequently, the management of Wembury Group's DB pension scheme will fall outside the scope of the exemption and therefore remains subject to VAT. Accordingly, there will be no claim for over-charged VAT in respect of the Wembury Group DB pension scheme.

The management of these types of funds remain subject to VAT and have not been included in the statutory instrument above as they accord with EU principles.

Recovery of VAT

In *PPG Holdings BV (C-26/12)*, VAT recovery in relation to an employer funded pension scheme was considered. This case found that provided that a service had been supplied to the employer and there was a direct and immediate link to the employer's business, the VAT charged should be recoverable in line with the employer's normal VAT recovery rate. It is therefore necessary to establish whether the services have been received by the employer (Wembury Group), or by the Trustees of the DB scheme (being a separate legal person). The following indicators should be used to ascertain the recipient of the services for VAT purposes:

- Who has contracted for, commissioned and used the services?
- Who are the invoices addressed to?
- Who has paid for the services?

Where all of the above criteria have been met HMRC will accept that the recipient can deduct the VAT charged by the supplier. This position was set out in HMRC Brief 43/14.

Applying the above, it is clear that although Wembury Group is named on the invoices, it is not a party to the service agreement. As such, Wembury Group will not be entitled to treat all of the VAT incurred as its input tax. Instead, the VAT charged will be proper to the DB scheme's trustees and, assuming the trustees are VAT registered, deductible in line with the DB scheme's partial exemption position.

It is likely that the invoices have been addressed to both Wembury Group and the scheme's trustees as a result of a concession that HMRC have allowed.

This concession allows Wembury Group to treat 30% of the value of the invoice as relating to its own obligation to establishing and operating the pension scheme (rather than to the trustees' obligation to manage the assets of the scheme). As such, VAT relating to 30% of the services has been recoverable by Wembury Group.

HMRC issued clarification regarding recovering VAT incurred on pension fund costs in R&C Brief 3/2017. HMRC confirmed in the Brief that businesses can continue to use the 70:30 split concession on an ongoing basis or they can elect to use one of the alternatives outlined below. It would therefore be prudent for the business to undertake an exercise to see if whether continuing to use the concession or one of the alternatives would be most beneficial to the business.

If it is possible, it might be more beneficial to restructure the agreements and invoice procedures to secure VAT recovery for Wembury Group going forward, although it will be necessary to ensure compliance with pension law and regulatory requirements.

Since the publication of the Revenue and Customs Brief, some employers expressed a concern that directly contracting for pension fund management services may sometimes be difficult owing to the regulatory context in which they operate. Accordingly, they asked whether HMRC would accept that tripartite contracts between the supplier, pension scheme trustees and employer meet the condition that the employer must contract for the services.

HMRC has considered the use of tripartite contracts specifically in the context of DB pension schemes where the regulatory regime requires the scheme to be established under a trust and it is the employer that ultimately bears the financial risks and benefits associated with the performance of the scheme.

Given the unique nature of these DB pension arrangements HMRC accepts that tripartite contracts can be used to demonstrate that the employer is the recipient of a supply of DB pension fund management services. An employer may therefore be able to deduct VAT incurred on these services in line with its residual recovery position where, as a minimum, the contract with the service provider evidences that:

- the service provider makes its supplies to the employer (albeit that the contract may recognise that, in the particular regulatory context in which DB schemes operate, the service provider may be appointed by, or on behalf of, the pension scheme trustees)

- the employer directly pays for the services that are supplied under the contract

- the service provider will pursue the employer for payment and only in circumstances where the employer is unlikely to pay (for example, because it has gone into administration) will it recover its fees from the scheme's funds or the pension scheme trustees

- both the employer and the pension scheme trustees are entitled to seek legal redress in the event of breach of contract, albeit that the liability of the service provider need not be any greater than if the contract were with the pension scheme trustees alone and any restitution, indemnity or settlement payments for which the service provider becomes liable may be payable in whole to the pension scheme

trustees for the benefit of the pension scheme (for example in circumstance where the scheme is not fully funded)

- the service provider will provide fund performance reports to the employer on request (subject to the pension scheme trustees being able to stipulate that reports are withheld, for example where there could be a conflict of interest)

- the employer is entitled to terminate the contract, although that may be subject to a condition that they should not do so without the pension scheme trustees prior written consent (this can be in addition to any right that the pension scheme trustees may have to terminate the contract unilaterally)

In addition to the above, evidence that the pension scheme trustees agree that it is the employer who is entitled to deduct any VAT incurred on the services will reduce the potential for disputes.

For an employer to be able to deduct any VAT, it will be necessary for them to be issued with a valid VAT invoice for the full cost of the supply and to pay the service provider directly for the full cost of the services. HMRC does not accept that an equivalent increase in contributions to the fund or any payment that is made by, or through, the fund constitutes payment by the employer.

If an employer recharges the net cost of those services to the pension scheme, that recharge is consideration for an onward taxable supply and VAT is due accordingly. This amount is potentially deductible by the pension scheme to the extent that the pension scheme is engaged in taxable business activities.

Pension scheme trustees and employers will normally regularly review the level of contributions required by the employer into its pension fund/s to ensure those funds are able to meet the forecast pension benefit commitments. HMRC accept that if adjustments are made to these contributions, to take account of the fact that it is the employer rather than the fund that is paying for certain costs, that does not constitute consideration for a supply by the employer to the pension fund. This is provided that there is no specific reduction equal to the actual costs that were incurred in any given period.

HMRC also published R&C Brief 17/15 which suggests how the VAT and corporation tax treatments interact. In this Brief HMRC suggest options for securing the corporation tax deduction without losing the VAT deduction.

Defined Contribution ('DC') pension scheme

The VAT treatment of the management of DC pension schemes was considered by the CJEU in the case of *ATP PensionService (C-464/12)*. The Court concluded that in contrast to DB pension schemes, DC pension schemes meet the criteria to be regarded as a 'special investment fund' within the meaning of the VAT exemption. The principal reason for this conclusion is that the capital invested by a DC scheme is money invested by individual employees who are bearing the investment risk themselves. This therefore meets the test that the fund must invest capital raised from the public. In interpreting this, HMRC confirmed (in HMRC Brief 44/2014) that any indirect contributions will not compromise this test. So, for example, matched contributions by the employer would be treated as being indirectly made by the individual (ie that such payments form part of the individual's remuneration). Consequently, the management of Wembury Group's DC pension scheme should be VAT exempt. From 1 April 2020 in response to this case, HMRC formally changed the law (as per the statutory instrument above) and essentially mirrored the conditions in the Business Brief.

Applying the above to the services that are received in relation to the DC pension scheme:

- The supply of investment management services by FundCo will fall clearly within the fund management exemption. FundCo should therefore treat its services as exempt from VAT on future invoices.

- The supply of administrative management services by Himalaya Ltd should also be invoiced exempt from VAT going forwards as such services have been confirmed to fall within the scope of the term "fund management" in the case of *Abbey National plc v. CCE* (Case C-169/04).

- The supply of legal services by Global Law LLP, however, will not fall within the fund management exemption as these services are supplied on a standalone basis and therefore lack the distinctive nature of a fund management service (as set out in the case of *Abbey*). VAT will remain chargeable on these services.

As the effect of the CJEU's judgement in *ATP PensionService* is to set out the law as it has always applied, the services supplied by FundCo and Himalaya Ltd should always have been exempt from VAT. Therefore, the DC pension scheme as the recipient of the services, and not Wembury Group, will be entitled to a refund of the VAT it has historically been charged by these suppliers during a four year period preceding the date of the claim. As it is the suppliers that have accounted for the VAT to HMRC, the correct process to follow will be for the trustees of the DC pension scheme to approach the suppliers to request the refund of the VAT charged and for the suppliers to submit a voluntary disclosure to HMRC.

Tutorial Note:

The answer is more detailed than would be expected from students within the time available. A good answer should split up the points into the following categories to score well:

1. UK v EU position on the scope of the exemption

2. CJEU cases and 2020 SI formally exempting management of defined contribution schemes (DCS)

3. Defined benefit schemes (DBS) <u>not</u> within the exemption and management is SR

4. As management of DBS is SR, what VAT recovery is available? Who can recover it? Direct and immediate link for employer? 30/70 rule can be used

5. DCS management is exempt – apply to services being supplied in the question eg legal services are not exempt as they are not 'management'

6. Go back to suppliers who have incorrectly SR supplies to request refund of VAT

CIOT MARKING GUIDE

TOPIC	MARKS
State that UK VAT law did not historically exempt the management of pension schemes	½
State that EU law exempts the management of special investment funds and confirmed by HMRC's SI	½
Analysis of DB pension fund management services, to cover:	
– For a pension scheme to qualify for exemption it must be regarded as sufficiently similar to funds that already benefit from the exemption (eg	
– UCITS funds).	½
– Fund invests capital raised from the public	½
– Investments in the fund must be pooled	½
– The fund invests in transferable securities and operates on a principle of	
– spreading risk	½
– To be a special investment fund beneficiaries of the scheme must bear the	
– risk of the return on their investments	½
Conclusion that management of a DB scheme is subject to standard rated VAT	½
Conclusion that there will be no claim for overcharged VAT for Wembury Group's DB scheme	½
Analysis of input tax recovery on services received from FundCo, to cover:	
– Comment that case law (PPG Holdings BV (C-26/12)) has concluded that where an employer has received services in relation to its employee pension scheme VAT can be recovered in line with the employer's residual	
– recovery rate	1
– State that it is necessary to assess whether the services were received by	
– Wembury Group or by the Trustees of the DB scheme	½
– Set out indicators of the recipient of the services include identifying the party to the contractual arrangement, the party to which the invoices are addressed and establishing who has commissioned, paid for and used the services (per	
– HMRC Brief 43/14)	1
– Conclude that although Wembury Group is named on the invoices, it is not party to the contractual agreement and that it cannot therefore treat the VAT	
– as its input tax	½
– Conclude that the VAT will be recoverable by the pension scheme in line with	
– its partial exemption position	1
– State that Wembury Group has probably been named on the invoices to support recovery of VAT relating to 30% of the supply that HMRC, by concession treated as the employer's input tax incurred in relation to administering the pension scheme (70:30 concession) therefore Wembury Group will have been entitled to recover VAT relating to 30% of the service supplied by FundCo. Mention of 3/2017 R&C Brief confirming ongoing	
– position.	1
– Refer to HMRC's Brief 43/2014 highlighting HMRC's policy that for the VAT to be recoverable by the employer they would need to be party to the agreement, pay for the services and receive the invoices. Credit given for discussion of RCB 8/2015 and tri-partite arrangements. Bonus mark for RCB	
– 17/2015 discussion.	½
Conclude that Wembury has no retrospective claim for VAT recovery relating to VAT incurred on services relating to the DB scheme	1
Analysis of DC pension fund management services to cover:	
– State that DC pension schemes allow pooling of investments and spreading of risk and investors bear the risk of the return on their investments and	
– therefore fall within the exemption (ATP case and SI)	1
– Conclude that the management of Wembury Group's DC pension scheme will	
– be exempt from VAT	½
Confirm that the management of the scheme's investments will qualify for exemption and that therefore FundCo's supplies to the DC scheme will be VAT Exempt	½

Explain that Himalaya Ltd's scheme administration services should also be VAT exempt as this is a form of management [candidates may refer to HMRC's Brief on Abbey or to the ATP PensionService case itself]	½
Confirm that the supply of legal services in isolation will not be regarded as a fund management service and remains taxable	½
Confirm that the VAT incorrectly charged on fund management services will be due back to the scheme as the recipient of the services and not to Wembury	½
Confirm that the Scheme must approach FundCo and Himalaya as its suppliers who have paid the VAT to HMRC and therefore must submit a voluntary disclosure to recover the VAT such that it can be repaid to the pension scheme.	½
TOTAL	**15**

[Credit has been given where candidates have advised that recharges of management costs incurred by the employer to the DB scheme will be a taxable supply and VAT may need to be charged and accounted for]

[Credit has been given where candidates state that the DC scheme may be able to make a financial restitution claim against HMRC (on the same lines as the ITC case) for any capped periods]

Examiner's report:
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This question was generally handled well by candidates with a relatively good proportion achieving the pass mark. In particular, candidates appeared well acquainted with the characteristics that would need to be present in a pension scheme in order for the management services to fall within the VAT exemption. However, in spite of this, many candidates then failed to pick up marks for observing that VAT charged in relation to the Defined Contribution scheme had been incorrectly charged and that the supplier should be approached, as it would need to submit the claim to HMRC.

Many candidates assumed that the employer had contracted, and been invoiced, for the fund management and administration services in respect of the Defined Benefit pension scheme. The question made it clear that this was not the case. Where candidates failed to read the question properly, some fairly straightforward marks were missed.

A number of candidates clearly displayed wider knowledge of the subject matter, and credit was given for relevant advice regarding the chargeability of VAT on recharges from the employer to pension scheme and for commenting on the potential for a financial restitution claim against HMRC should the VAT incurred not be recoverable from the supplier.

22. DAWLISH LTD (MAY 2015)

Construction of new residential block

A zero-rating relief is available for construction services supplied in relation to building a new dwelling or constructing a building that will be used solely for a relevant residential purpose. In order for the building to be regarded as a new dwelling for VAT purposes, it needs to provide self-contained living accommodation. To be regarded as self-contained living accommodation the building would also need to include kitchen facilities, which unfortunately the new block does not have.

A building used for "relevant residential purposes" can qualify for zero rating even where it is not sufficiently self-contained to be regarded as a dwelling. However, in order to benefit from the zero rating a building constructed for relevant residential purposes (that does not qualify as a dwelling) must be constructed at the same time as, and form part of, the overall care home site. Accordingly, Dawlish Ltd has incorrectly zero rated its invoice and VAT needs to be accounted for on the construction services.

Subcontractors' services cannot benefit from the zero rating even where the overall project consists of the construction of a building used for relevant residential purposes. Zero rating applies only to the main contractor's services (assuming that the recipient has issued a valid zero rating certificate prior to the supply). However, as the sub-contractor falls within the CIS and is supplying standard rated construction services, it is correct to not charge VAT on its invoice, as this is Dawlish Ltd's responsibility under the domestic reverse charge on construction services. Dawlish Ltd should account for the output tax on the supply in box 1 of its VAT return with a corresponding deduction of the same amount in box 4, provided it is making wholly taxable supplies. It is likely this can be done on the correct VAT return (it depends on the tax point and what quarterly returns are made) as the services were provided in the last few weeks.

Ongoing maintenance services

The contract contemplates that there will be an ongoing supply of services for which consideration will be determined periodically. This will be regarded as a continuous supply for VAT purposes and, tax points normally arise based on the earlier of:

- Receipt of payment; or
- Issue of a VAT invoice.

Therefore, prima facie, as Dawlish Ltd has not issued a VAT invoice for the supply or received payment, no tax point would have been created.

Based on the arrangements entered into it is clear that Dawlish Ltd will avoid charging and accounting for the full amount of VAT on its supplies to Alphington Ltd. If HMRC consider that the primary driver behind the implementation of such arrangements is to avoid VAT, it is possible that the arrangements could be regarded as abusive under the principles established in *Halifax and Others* (C-255/02).

Notwithstanding the above, the tax points for Dawlish Ltd's supplies of maintenance services will be subject to anti-avoidance provisions. Regulation 93 VAT Regulations 1995 requires that supplies of construction services (including repair and maintenance services) are treated as creating a tax point on the day on which the service is performed where:

- It is the supplier's expectation that the land or building on which the services are performed will be regarded as 'exempt land'.

- Land or buildings will be regarded as exempt land if the supplier, a person connected with the supplier or a person responsible for financing the work will use the land/building for non-business or VAT exempt activities.

Consequently, VAT should have been accounted for on any maintenance services supplied to Alphington Ltd on buildings that are not used wholly for taxable purposes on the day the service was actually performed.

In addition, anti-avoidance provisions in Schedule 6 (para 1), VATA 1994 require that where the supplier and recipient are connected parties (for example, where one person has control of both companies, as is the case with Alphington Ltd and Dawlish Ltd) and the recipient is not entitled to full VAT recovery, then HMRC can direct that the consideration be at market value.

Therefore, Dawlish Ltd should have accounted for VAT each and every time it performed a service throughout the entire life of the contract. To the extent that VAT is not accounted for based on the open market value of the services HMRC could impose a market value direction.

Quote for Old Folk Rock Limited

Ordinarily VAT at the standard rate of 20% is chargeable on extensions. This would add another £20,000 to the cost of the quote as Old Folk Rock Limited would not be in a position to recover the VAT charged as they are an exempt business.

The company could however split the quote into two separate elements as some of the job could be charged at 0%.

The supply and fit of solar panels are regarded as the supply and fit of energy saving materials and as such would be liable to the zero rate.

This would make the quote more attractive to Old Folk Rock Limited as the total cost of the work to them would reduce to £114,000.

Quoting as one single job would not secure the 0% rate on the solar panels and the quote would have to be charged at a single rate of 20%. This would be the case even if the individual elements were itemised on the quote.

When splitting the quote the company would be taking a commercial risk that the customer engages them for the extension and then goes elsewhere for the supply and fit of the solar panels but this is a risk that must be present to secure the 0% rate. The quote must in reality be for two jobs and as such the care home could appoint Dawlish for only one of the jobs. Given that the price is lower, via this route, the chances of Dawlish securing both jobs are greater but there is a commercial risk associated to this route.

If Dawlish is not prepared to accept this risk then the company must charge VAT at 20% on the £100,000 quote.

Next steps

As Dawlish Ltd has erroneously failed to account for VAT correctly it will need to disclose the errors identified above to HMRC. HMRC will then raise assessments against Dawlish Ltd to collect the under-declared output tax relating to the construction of the dining room and the maintenance services supplied. HMRC is likely to charge interest and penalties in respect of the errors identified. However, if Dawlish Ltd provides all available information and assistance in quantifying the error and identifying the relevant tax points, HMRC may be able to reduce the level of penalty applying based on the level of cooperation provided by Dawlish ltd.

CIOT MARKING GUIDE

TOPIC	MARKS
State that for the zero rating to apply the building must either be regarded as a dwelling or must be used for a relevant residential purpose.	½
State that, the building would not qualify as a dwelling in its own right as the residential block is not self-contained as it does not have any kitchen facilities, but that the building will be used for a relevant residential purpose as this includes use as a residential care home.	1
Apply the rules to the facts in Dawlish and conclude that the new building does not meet the criteria to fall within the zero rating provisions as the new residential block was not constructed at the same time as the other buildings (per Notes 5 and 16)	1
Advise that, as Painters' Plastering is providing its services to Dawlish and not to Alphington Ltd, its services could not be zero rated even if Dawlish Ltd's subcontracted work on zero rated constructions services relating to a building met the relevant residential criteria. DRC due on CIS services. Dawlish has under-declared VAT on the construction services in relation to the new residential block.	2
State that the repair and maintenance services will be regarded as continuous supplies and the normal tax points for such supplies. Comment that on this basis no tax point would have been created.	1
State that if the primary purpose of the arrangements were regarded as being to avoid tax the arrangements could be regarded as abusive by HMRC following the principles established in Halifax (C-255/02)	1
State that, notwithstanding the above, anti-avoidance provisions will apply to the construction services supplied and that these provisions will mean that the supply would be deemed to have taken place when performed	1
Set out and explain the anti-avoidance provisions for continuous supplies of construction services	1
Conclude that VAT should have been accounted for by Dawlish at the time that the services were performed unless performed on a building used solely for taxable purposes	1
State that anti avoidance provisions (under paragraph 1, Schedule 6 VATA 1994) will likely mean that HMRC will direct that the value of the supply should be determined in accordance with the market value of the services	½
State that a single quote will be charged at 20%	1
Identify the 0% element but that it must be separately supplied	1
Commercial risk point	1
Advise that Dawlish Ltd should disclose to HMRC the errors relating to the under declared output tax on the construction of the annex and the repair and maintenance services.	1
Following receipt of the disclosure, HMRC will assess Dawlish Ltd for the errors and interest and penalties may also apply. Comment that Dawlish Ltd should cooperate with HMRC as this may enable the penalty to be mitigated.	1
TOTAL	**15**

Examiner's report:
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This question called for analysis of supplies of construction services between connected parties. This question was handled poorly by most candidates.

Many candidates struggled to fully analyse the VAT treatment of the construction of the annex in the grounds of an existing care home. In particular many candidates did not conduct an analysis of whether the building constructed met the requirements to qualify as either a dwelling or as a building of Relevant Residential Purpose ('RRP'). Instead, many candidates simply concluded that any construction work in relation to a RRP building must qualify for the zero rating.

A surprisingly large number of candidates went on to advise that the care home provider should register for VAT, as it would be entitled to recover any VAT incurred. This was not relevant to the question and also demonstrated that these candidates lacked the wider knowledge to identify that, even if the care home provider was entitled to register for VAT, it would be subject to a significant input tax restriction.

Candidates also did not fully address the treatment of the repair and maintenance services between the construction company and the care home. Specifically, whilst some candidates observed that anti-avoidance provisions could apply, very few candidates identified that specific anti-avoidance tax point rules apply to supplies of construction services between connected parties (where the recipient of the services is not entitled to full VAT recovery in relation to the building on which the work is done).

23. WARREN POINT INSURANCE LTD (MAY 2015)

Meaning of premium and calculation of IPT

IPT is calculated by reference to the chargeable amount of premium. This is specified by law as being inclusive of the IPT chargeable.

Further to the above, a premium is defined as any amount received under the contract for insurance including any payment referable to any the following:

- The risk insured;
- Costs of administration;
- Commission;
- Instalment or deferred payment facilities;
- Insurance premium tax.

Therefore, Warren's system will need to be configured to include all of the above. Where the contract relates only to a risk located outside the UK, the insurance contract will be exempt from IPT. The determining factor for identifying the location of risk for motor vehicles is the location where the car is registered. Therefore, as the Isle of Man is outside the UK for IPT purposes, any insurance contracts relating to cars registered in the Isle of Man will be exempt from IPT.

New products

Motor insurance provided under a hire contract under the Motability scheme for disabled individuals receiving personal independence payments are exempt from IPT.

[Credit will be given for also stating the following: If the conditions of the exemption are not met, for example, the individual uses the payment to buy their own car then the contract will be taxable. The standard rate would likely apply for most types of motor insurance supplied (provided that Warren supplies the insurance direct to individuals and not via a motor car dealer).]

The new products relating to Carp's Cars Ltd are less straightforward. The higher rate of IPT applies to MBI contracts when sold by a motor dealer or when a payment is made out of the insurance premium to a motor dealer. Therefore, if Warren pays a commission to Carp's Cars for distributing the product, the MBI will be subject to the higher rate of 20%.

This could however be a standard rate contract, if, for example, Lynton Sands arranges the contract (and not the motor car dealer) and there isn't a fee paid for each contract taken up, but a flat rate fee is paid to Carp's Cars regardless of the number of policies taken up.

The arrangements that Carp's Cars are suggesting in relation to the MBI product are also problematic. The effect of such a structure would be to reduce the IPT payable for the MBI product through specifying that part of the payment relates to VAT exempt insurance administration services and therefore do not constitute premium payable for the insurance product.

If the MBI is a higher rate contract, then if the £15 is disclosed to the customer, then Lynton Sands would become a taxable intermediary and would have to register as an insurer and account for IPT at the higher rate on the fee received. This would also be the case for any commission that Carp's Cars disclosed to the customer.

If the MBI is a standard rate contract (as discussed above) then the £15 fee (along with any commissions disclosed separately by Carp's Cars) would be included in the amount of the premium for Warren.

Such a structure under a standard rated contract will not be successful due to changes in the law (following the case of *Homeserve GB Ltd)* which requires that administration fees of this nature are treated as part of the value of the premium and subject to IPT where all of the following conditions are met:

- Both contracts are entered into by an individual in their personal capacity;
- The individual is required to enter into the administration agreement as a condition of the insurance agreement (or would be unlikely to do otherwise);
- The individual is not able to negotiate the terms of the services or the price; and
- The premium is a set amount, ie it is not calculated based on individuals' risk profiles.

The repair and maintenance contracts do not insure against a risk, so they are not subject to IPT, but will be subject to VAT at the standard rate.

Commissions paid to brokers

Any amount retained by a broker as their commission for selling a contract of insurance constitutes part of the premium for IPT purposes. Accordingly, Warren should have accounted for IPT on the entire price paid for the insurance by the policy holder and not just the net amount remitted by the broker. Therefore, IPT has been under-declared by this difference.

Warren should liaise with the broker in question to ensure that the right values are being reported as premiums.

[Credit given here if students suggest that the 'broker' might disclose a commission to the insured. In this case the taxable intermediary point above will apply if it is a higher rate contract and the Homeserve reversal discussion above will be relevant if it is a standard rate contract. Paragraph 3.2.5 of the Public Notice, in the Orange Part 2 Handbook, deals with commissions received by intermediaries, in this situation]

Mid-term adjustments

As the change in the policy holder's details results in an adjustment to the premium due under the contract of insurance, additional IPT should be accounted for on any increase in the premium. As Warren accounts for IPT under the special accounting scheme, the additional IPT becomes payable based on the date that the additional premium is entered into its books as premium owed.

Based on the above, Warren will have under-declared IPT by reference to any mid-term adjustments resulting in an increase in premium.

Next steps

Warren has under-declared IPT in relation to mid-term increases in premium and on the value of premium where brokers have sold the policy for an amount in excess of the minimum premium set by Warren. Therefore, it will be necessary for Warren to correct these errors with HMRC.

Warren can either make a formal voluntary disclosure of the errors by writing to HMRC, or correct the errors on its next IPT return; however, this second option is only available when the net value of the errors does not exceed the higher of:

- £10,000; or
- 1% of the net taxable premiums (ie the Box 10 figure on the return) up to a maximum value of a £5,000,000 box 10 figure (ie errors to a maximum £50,000).

Warren could also be subject to interest and penalties. Any penalties will be based on the degree of culpability. Assuming that the error arose as a result of a gap in knowledge or processes, HMRC would treat this as a 'careless' error. This should be subject to a maximum penalty of 30% of the IPT due. It will be possible for HMRC to reduce this penalty based on Warren making an unprompted disclosure of the error.

Tutorial Note:

The question was vague as to how the arrangements with Carp's Cars were structured. The examiner gave credit for both alternative arguments that it could be a higher rate contract and therefore a 'taxable intermediary' was created, or that it was a standard rate contract and Homeserve was relevant. Students did not need to discuss both possibilities to gain all of the marks as per the marking scheme.

MARKING GUIDE

TOPIC	MARKS
Advise on the meaning of premium per s.72 of FA 1994 to include: – Risk – Costs of policy administration – Commissions – Facilities for paying by instalments – Tax – highlight that premium is IPT inclusive	1½
Confirm that insurance of risks outside the UK is exempt from UK IPT	½
Advise that location of risk for cars is established by reference to the place where the car is registered, and that insurance of cars registered in the Isle of Man will be exempt from UK IPT	1
Advise that insurance of cars for the use of individuals receiving personal independence payments could be exempt from IPT if hired through Motability	1
Explain the higher rate and how it applies to insurance sold by motor dealers or insurers who make a payment to a motor dealer out of premium and confirm that this could apply to Warren	1
If it is a standard rate contract explain the background to Homeserve Membership Ltd [2009] EWHC 1311 (Ch) and premium splitting and the consequent change in law. Advise that the arrangements proposed by Carp's Cars will not work. Alternative argument that if the MBI is a higher rate contract then the commission/admin fee will be caught under s.52A and the recipient will need to register as a taxable intermediary. In this case, Homeserve isn't relevant.	2
Explain that maintenance and repair contracts are not subject to IPT but are subject to VAT	1
Advise that the entire premium paid by the insured is subject to IPT and not just the premium remitted by the broker if the commission is not disclosed or it is a standard rate contract [Credit given for alternative answer that if it's a higher rate contract and the broker disclosed the commission to the insured then the broker would register and account for the IPT on the commission]	1½
Advise that increases in premium result in an increase in the IPT due to HMRC	1
Advise that under the special accounting scheme additional IPT will be due at the point at which Warren enters it into its accounts as payable	1
Advise that Warren needs to correct its errors with HMRC	1
Explain the options available to Warren ie voluntary disclosure or adjustment on a return if the value is beneath the thresholds (higher of £10,000 or 1% of Box 10, subject to a max £50,000)	1½
Explain the potential penalty implications and the impact of disclosure on the percentage penalty applicable	1
TOTAL	**15**

[Credit of ½ has been given to candidates that have explained the IPT fraction as the question does request an explanation of the calculation of IPT.]

Examiner's report:
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This question was answered well, with the majority of candidates achieving the pass mark. Many candidates demonstrated a good understanding of the scope of UK IPT and basis on which the location of risk was determined for cars. Candidates also dealt well with the treatment of adjustments and additional premiums, and provided relevant advice on the treatment of brokers' commissions and admin fees.

However, some candidates failed to secure some fairly straightforward marks due to a lack of focus on the question, and having spent a large amount of time writing general information about the UK IPT regime.

IPT ANSWERS

24. HOME REPAIRS LTD

£100 insurance policy sold to householders

- IPT is only due on risks in the UK. This includes the policies sold in GB, which includes the Scilly Isles, but not the ROI, the Isle of Man or the Channel Islands.
- Thus, 20,500 taxable policies have been sold. The rate of IPT due is 12%.
- Although the items insured are domestic appliances, none of the premium goes to the vendor of the appliances; Home Repairs Ltd is not connected to the vendor of the appliances and is not a supplier of domestic appliances.
- The amounts received are inclusive of IPT so the amount of IPT due is £219,643 (20,500 x 100 x 3/28).

Insurance policy sold to hotel group

- The consideration for the insurance for IPT purposes will include the interest fee that is charged (s.72(1) FA 1994). Thus, the premium will be £20,730.
- The premium needs to be apportioned between the hotels in the Republic of Ireland and the UK. S.69 Finance Act 1994 requires the apportionment to be fair and reasonable.
- It would be possible to apportion this between the number of hotels, 80/20 but as the cost of insurance in the Republic of Ireland is higher this needs to be taken into account and a weighting needs to be applied for the 10% higher cost.
- This means that the proportion of the fee relating to the UK is £16,259 (20,730 x 80/102).
- As the premium is a gross cost, the IPT due is £1,742 (3/28 x £16,259). (The rate is 12% as the same principle as detailed above for the individual householders applies here)

Free warranty on kettles for fee of £10,000 a year

- There is no IPT due on the free warranties or administration fee (not contracts of insurance).

Extended warranty on kettles

- The extended warranties sold by Black Pots Ltd will be subject to IPT at the higher rate.
- This is because the insurance is arranged through the vendor of the goods who receives a proportion of the income (para.3(2) Sch.6A FA 1994).
- The full £10 is subject to IPT as there is no deduction for any commissions retained. As the premium is a gross amount the amount of IPT due is £1,250 (7,500 x 1/6).

Sale of extended warranties by Home Repairs Ltd

- The higher rate does not apply to the sale of the extended warranties by Home Repairs Ltd.
- This is because the contract is not arranged through the vendor, Home Repairs Ltd is not connected to Black Pots Ltd and no fee is paid to Black Pots Ltd in connection with this contract.
- As the premium is a gross amount the amount of IPT due is £1,286 (10 x 1,200 x 3/28).
- HMRC may argue that the fee charged for administering the free warranties has been reduced to enable Home Repairs to get access to the database.
- This reduction could be argued as being consideration payable to Black Pots Ltd; a fee paid to Black Pots Ltd in connection with the contract.
- If that argument is successful, the higher rate is applicable on the extended warranties sold by Home Repairs Ltd (para.3(2)(c) Sch.6A FA 1994).

MARKING GUIDE

TOPIC	**MARKS**
General points	
– IPT only due on UK risks	½
– Definition of the UK	½
Policies sold to householders	
– Number of policies liable to IPT	½
– Rate of IPT – 12%	½
– Justification for standard rate	½
– Premiums IPT inclusive	½
– Calculation of IPT	½
Policy sold to hotel	
– Includes interest	½
– Calculation of premium	½
– Need to apportion premium for overseas risk	½
– Apportion fair and reasonable	½
– Apportionment for number of hotels and cost higher in Republic of Ireland	½
– Calculation of UK premium	½
– Calculation of IPT – 12% rate	½
Free warranties/admin fee	
– No IPT as not contracts of insurance	½
Extended warranties through Black Pots	
– Liable to IPT at higher rate	½
– Justification of higher rate	½
– No deduction for commission	½
– Calculation of IPT	½
Extended warranties sold by Home Repairs	
– Liable to IPT at standard rate	½
– Justification of standard rate	½
– Calculation of premium	½
– Calculation of IPT	½
Final points	
– Total IPT due	½
– HMRC arguments about administration fee being consideration and therefore higher rate applies	2
TOTAL (MAX)	**10**

25. MLU

IPT – arrangement and administration fee

Legislation was inserted into FA 1994 (which applies to premiums received on or after 24 March 2010) and whether these types of fees have to be included in the amount of the premium for IPT purposes. Prior to this date, the High Court case of *Homeserve* applied to determine the amount of the premium. As the policies have only been provided for the past five years, only the current position is relevant.

Current position

The premium does not include a commission or fee which is provided under a 'separate contract'. A sub-section was inserted into s.72 which clarifies the meaning of a 'separate contract.'

Where four conditions are satisfied, the contract is not treated as separate.

This is where:

1) An individual enters into the contract;

2) That individual is required to enter into the administration contract as a condition of entering into the insurance contract;

3) The amount charged to the individual for the administration fee is not open to negotiation by them; and

4) The amount charged to the individual under the insurance contract is arrived at without a comprehensive assessment having been undertaken of the individual's circumstances that might affect the level of risk

Thompson Limited and MLU (whose model looks highly comparable to that of the case of Homeserve) should look at the conditions in the legislation and if each one is satisfied then MLU should have applied IPT on the £15 administration fee, as it is treated as part of the premium.

Note that HMRC can generally go back four years to collect underpayments of IPT (unless the loss of IPT was brought about deliberately, in which case there is a 20-year time limit). Therefore, assuming that if any underpayments have been made (and assuming they aren't deliberate), HMRC will only be able to collect the IPT on them for the last four years.

Boiler warranties

The higher rate of IPT will apply to an insurance premium relating to certain electrical domestic appliances if the contract is arranged through or supplied by, inter alia, a person who pays a portion of the premium to the supplier [Sch 6A FA 1994 para 3(2)(c)(i)]. This would seem to cover Thompson Ltd and they are registrable for IPT as a taxable intermediary under s.53AA FA 1994 with a requirement to account for the higher rate of IPT on the fee charged to the insured.

Late registration

A person who fails to notify HMRC that he is liable to be IPT-registered faces a penalty of a maximum 30% of the potential lost revenue (where the failure is due to a careless mistake).

Thompson Ltd could face this penalty unless they can demonstrate that there was a reasonable excuse for their failure to notify. This cannot include insufficiency of funds or reliance on another person (eg, accountant, advisor).

Insurer's position

MLU will need to account for the higher rate in respect of the whole premium (including the portion paid away to the boiler supplier) in the case of the extended warranties. In relation to the plumbing and heating cover, it can continue to account for IPT at the standard rate on the amount charged for the cover, including the administration fee charged by Thompson Limited, if the contract is not "separate" for IPT purposes.

Tutorial Note:

All relevant points would receive credit. For example, mentioning:

- that the location of the risk determines the liability to IPT and not the location of the insurer
- that the Belgian company could appoint a tax representative if it wished (although this is not obligatory)
- mentioning the Policy Administration Services case
- mentioning that penalties can apply to any incorrect returns and that prompt disclosure could reduce them

MARKING GUIDE

TOPIC	MARKS
Introduction	
Only providing policies for five years, so current position (from 24.3.10) is the only one relevant	1
Legislation defines whether the fee is included	1
Current position	
Reversal of Homeserve in legislation	1
Four conditions	2
Boiler warranties	
Higher rate	1
Why higher rate applies	1
Taxable intermediary	1
Late registration	
Max 30% penalty	1
Insurer's position	
Conclusion	1
TOTAL	**10**

Examiner's report:
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Most candidates demonstrated awareness of the Homeserve decision* and were able to quote appropriately from the law as to the definition of "premium" - though a number got confused when describing the criteria for treating a fee as charged under a "separate" contract.

The majority of scripts picked up the application of the higher rate to the extended boiler warranties although again some explanations as to why this was so lacked clarity and a firm grasp of the legislation. Some candidates were unaware that appointment of a tax representative is now optional rather than obligatory. The best candidates demonstrated commercial awareness in their advice to colleagues as to the best course of action for the company going forward.

***Tutorial Note:**

When this question was set it covered the position both before and after 24.3.10, so a more detailed discussion of Homeserve was required at the time.

26. IPT ISSUES

1) IPT tax points

IPT should be accounted for based on the relevant tax point. The basic tax point is the receipt of the taxable premium by the insurer (s.49 and s.72(1) FA 1994). Receipt for this purpose may sometimes include the receipt by third parties of commissions and fees which are deemed part of the premium.

However, the law provides for a Special Accounting Scheme (also known as the "Written Premium Method") which allows an insurer to account for tax on the premiums by reference to the date the amounts are entered into his accounts as due even if this is later than the actual receipt or the due date. (S.68 FA 1994 and Regs 20 – 28 SI 1994/1774 give the details.)

In outline, the insurer must notify HMRC that he wishes the scheme to apply from a date which must be on or after the notification itself following which the insurer will be permitted to account for tax by reference to the date each premium is written into the accounts rather than when received.

Reg 24 SI 1994/1774 deals with excess amounts under the special accounting scheme. Where what is received exceeds what was written as due, this is treated as a separate premium amount (subject to possible market value direction rules). Where this excess is entered into the records as due, the date of such entry will be the tax point. Otherwise the excess shall be treated as received on the date as at which the original premium amount was entered in the records as due.

Tutorial Note:

If the assumption was made that 'overpayments' meant that the company had accounted for too much IPT and mentioned regulation 25 instead, equal credit would be given.

As regards bad debts, credit for IPT paid on premiums which were entered in the records but never received is possible to the extent the insurer can satisfy HMRC that the amount will never be received (s.55(2) FA 1994 and Reg 25(1) SI 1994/1774 refer).

2) Guarantee Premium

Company Z appears to be in a similar situation to that at issue in the tribunal case of *GPI v HMRC*. The guarantees themselves are not contracts of insurance and therefore there is no liability for the contractor to register and account for IPT on the receipt of them.

The amount charged under the guarantee premium could only be liable to IPT if it was a commission/admin charge that related to a taxable contract of insurance. If the amount that company Z is charging is a figure that they have fixed and is nothing to do with the insurance contract, that the insurer has no control over, then it will not be liable to IPT. The Insurer will only account for IPT on the amount due to them under the insurance contract itself.

3) Errors

The limits for voluntary disclosure are the greater of £10,000 and 1% of turnover - up to an overall maximum £50,000 (see Reg 13(3) SI 1994/1774). The "turnover" should be calculated by reference to the entry in box 10 on the IPT return (net value of taxable premiums (excluding tax)). Company B may be right, but it needs to be verified that turnover is high enough to allow them not to disclose separately.

Where an error falls below this threshold it may be corrected on the return without notifying HMRC. A careless error can be subject to a penalty of up to 30%, but this can be mitigated to zero if an unprompted disclosure is made. Correction of the error in accordance with the regulations does not protect against such a penalty if the original error was "careless": it is still necessary to disclose to ensure full mitigation.

4) Credit guarantees and Homeserve

Only insurance contracts are potentially subject to IPT (s.70 FA 1994). Case-law (*Prudential Insurance Company v Inland Revenue Commissioners (1904) 2 KB 658*) indicates that insurance contracts require three key elements:

i) A premium being paid;

ii) The insured being indemnified against loss from an uncertain event;

iii) The insured having an insurable interest – ie he would otherwise suffer the loss in question.

Credit guarantees may not fall within this definition, in which case they would not be subject to IPT. The Public Notice (IPT 1, paragraph 4.12) gives a number of possible indicators that a contract is an exempt credit guarantee agreement rather than an insurance contract, it is better to ask for some sample agreements to check and determine with the full facts.

On the question of administration agreements related to insurance agreements, HMRC changed the legal definition of premium (s.72 FA 1994) after losing the Homeserve High Court case, which had held that amounts charged for administration of a standard-rated insurance contract but under a "separate" contract notified in writing to the insured were not subject to IPT. Now such a contract would not be treated as "separate" where four conditions are met (s.72 (1AA-1AE) FA 1994):

i) The insured is an individual entering into the contract in a non-business capacity;

ii) The insured is unable or unlikely to enter into the contract without also entering into the insurance contract;

iii) Neither the price nor the terms of the contract are open to negotiation by the insured; and

iv) The amount charged to the insured is arrived at without a comprehensive assessment of the individual circumstances which might affect the level of risk.

If the administration agreements meet the conditions above then company K should be accounting for IPT on the amounts charged the third party – and care will need to be taken to ensure the relevant amounts are notified to company K with sufficient notice for them to be included in the correct IPT return period.

5) Criminal Penalties

HMRC would consider civil penalties in the first instance. However, if they believe the behaviour is serious enough to merit criminal prosecution, possible offences would include fraudulent evasion or the furnishing of a false document (ie the IPT return in question). Paras 9 and 10 Sch 7 FA 1994 give further details and confirm that, on summary conviction (Magistrate's Court), the penalty could be a fine of the higher of up to three times the amount of tax or £20,000 and/or imprisonment for up to six months. A Crown Court could impose an unlimited fine and/or a prison sentence of up to seven years.

Examiner's report:
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Some candidates still persist in setting out everything they know about the tax instead of tailoring responses to address the question. While relevant correct points receive credit, it does not assist the examiner if he needs to hunt for these points and the student is wasting time which could be spent earning marks elsewhere.

The examiner was surprised at how few candidates answered comprehensively and coherently on the Homeserve point given the case's topicality.*

The best scripts picked up the Prudential case point and realised that there might not be a definitive answer without further information – as is often the case in practice.

Only the weakest candidates failed to get full marks on the criminal penalties section – although some persisted in setting out the new civil penalty regime when this had specifically not been requested.

***Tutorial Note:**

This question was set when Homeserve was topical. The answer today would focus on the legislative change, as detailed above.

27. COVERSURE INC

Liability to Register for UK IPT

Coversure Inc will become liable to register for UK IPT if it intends to make supplies of taxable insurance contracts, where the risk is located in the UK.

The sales of travel insurance, which it intends to make, are taxable insurance contracts. The risk is located in the UK where the travel insurance falls under one of the following categories:

1) The contract covers travel and has a maximum duration of four-months and is 'taken out' (or 'entered into') in the UK. 'Taken out' means that the person taking out the insurance was in the UK when it was booked. For bookings via the internet, this means if the person books it from the UK.

2) For travel contracts exceeding four months, if the person who took it out is 'habitually resident' in the UK when they took it out. 'Habitually resident' means having been resident for (generally) a one-year continuous period.

Therefore, as Coversure is intending to sell to UK individuals it is likely to be liable to UK IPT and will need to become registered.

Travel insurance is liable to the higher rate of IPT, which is currently 20%.

Registration for IPT

Coversure must register for IPT within 30 days of having formed the intention to receive taxable premiums. This is done through completion of form IPT1 and can be done online. There is no threshold before registration applies. The date Coversure receives its first premium will be the effective date of registration.

Even though Coversure does not have a place of business in the UK it will still be responsible for submitting IPT returns. If it wishes, it could appoint a tax representative to do this. However, Coversure is still liable for the IPT due. Therefore, ultimately HMRC will pursue Coversure for any underpayments.

Accounting for IPT

Coversure will be required to submit quarterly IPT returns. This is done online. The return and payment are due by the end of the month following the quarter. If it pays by electronic means, then a 7-day extension to the above deadline for the payment only, is given.

IPT must be accounted for based on the tax point. The tax point is generally the day a premium is received. As an alternative a company can use the date the premium is due to it or entered in its records. A company must notify HMRC if it wishes to use this method. The premium is the amount charged to the insured and is deemed IPT inclusive. Therefore, Coversure will be required to account to HMRC for $^1/_6$ of each taxable premium.

Records relating to insurance contracts must be kept for six years.

MARKING GUIDE

TOPIC	MARKS
Liability to register	
– Intention to make taxable supplies	½
– Risk in the UK	1
– Travel insurance is taxable	½
– Max 4 months = 'taken out' rule (or 'entered into')	1
– Definition of 'taken out' (or 'entered into')	1
– More than 4 months – 'habitually resident' rule	1
– Need to become registered	½
– Rate of IPT on travel insurance (HR)	½
	6
Registration for IPT	
– Deadline and form	1
– Threshold and effective date of reg'n	1
– Overseas issues	2
• Registration	
• Tax representative	
• Liability of insurer	
	4
Accounting for IPT	
– Quarterly online returns	½
– Deadline for payment	1
– Tax point	2½
• Receipt	
• Due/entered in accounts	
• Tax inclusive	
– Records	1
	5
TOTAL	**15**