

**IIT 2010/11 ASSOCIATE EXAMINATION
PAPER II VAT ROUTE – POTENTIAL SOLUTION**

Question 1

1.
 - a. When the fee in respect of those services is received by the barrister or advocate.
 - b. When the barrister or advocate issues a VAT invoice in respect of them,
or
 - c. The day when the barrister or advocate ceases to practice as such.
2. The place where it is legally constituted.
3. If the price payable by him for the goods in question:
 - a. Was less than the lowest price that might reasonably be expected to be payable for them on the open market, or
 - b. Was less than the price payable on any previous supply of those goods.
4. 30%. (FA 2007, Sch 24, Para 4(a))
5. Exempt. (VATA 1994, Sch 9, Group 6, Note 1(f))
6. 90 days.
7. Six months after:
 - a. The date of supply, or
 - b. If later, the date on which the consideration for the supply became payable.
8. If it exceeds £50,000 or 50% of the residual input-tax and £25,000.
9. The beneficiary. (VATA 1994, Sch 10, Para 40)
10. Answer is 10. (VATA 94, Sch 8, Gp 8, Item 4(a))
11.
 - a. Normally hired for a period of less than 30 consecutive days and
 - b. Normally hired for less than 90 days in any period of 12 months.
(SI1992/3222, Article 7(3))
12. £250. (S1 1995/2578, Reg 16)
13. Where the cost to the donor, together with the cost of any other business gifts made to the same person in the same year, does not exceed £50.
14. The Housing Association must certify its intended use as:
 - a. A dwelling or number of dwellings, or
 - b. Solely for a relevant residential purpose. (VATA 1994, Sch 10, Para 10 (1))

15. Must be made no later than six years after relevant event or relevant entitlement. (VATA 1994, Sch 9A, Para 4(1))
16. Effective from the 29th day of residence. (VATA 1994, Sch 6, Para 9))
17. "Major Interest" in land means the fee simple or a tenancy for a term certain exceeding 21 years.
18.
 - a. 5% of the sum to be repaid.
 - b. After 30 days.
19.
 - a. Land £250,000.
 - b. Computers £50,000.
20. Input-tax must be less than £625 per calendar month on average and less than 50% of total input-tax.

Question 2

Intermediary Services in Insurance & Financial Sector

A review of the VAT liability of contractual payments to 3rd party intermediaries is a regular exercise for insurers. The current UK exemption under Item 4 of Group 2 to Schedule 9 is considerably more detailed, and in many ways wider, than that set out in Directive 2006/112/EC art 135(1)(a). Recently, litigation in both the UK, particularly Insurancewide/Trader Media, and in the ECJ (JCM Beheer) has tended to favour the taxpayer. A review of VAT and Financial Services is currently being conducted by the EU Commission.

The review can be divided into two elements, sales and claims/administration. The key to VAT exemption for introducing or arranging insurance is to play an intermediary role in bringing the parties together – in short, would an insurance contract have been concluded but for the role of the intermediary? Broker's commission is clearly VAT exempt, but payments by an insurer for it to be included on a Panel (i.e. if you do not pay, then your policies are not quoted) is more contentious. Whilst there is an argument that this is merely an inducement-type payment, and therefore standard rated, the point was tested in the Bank of Ireland Case, the courts finding that an additional payment was for the "continued existence of the intermediary structure", and therefore exempt from VAT.

Call centre operators are not considered by HMRC to be insurance agents per se, their expertise being rapid cold-calling rather than insurance. However, when they are able to put the customer on risk there and then, HMRC accept that they are insurance agents and can therefore exempt their fees. This is in line with the findings in Teletech Ltd. Furthermore, the "prospecting" element of their services was

identified in the Andersen ECJ Decision as the key function of an insurance intermediary.

Payment for membership lists is well established as failing to meet the tests for insurance exemption, the owner of the list falling short of insurance agency status, and not meeting the HMRC tests of recommending the product or paid on take up.

Claims handling by legal firms is growing more common. However, solicitors are considered as “other experts” under Legal Note 9 and can therefore only achieve the status of “insurance agent” if a written delegated authority has been granted by the insurer. There is nothing to suggest that Brown & Partners have been granted such an authority and therefore their services are standard rated.

Payments to Swift Claims Ltd, provided it qualifies as a specialist claims handling company, are automatically exempt from VAT, whether or not a delegated authority is in place.

Loss adjusters, Green & Co, are also specifically excluded from exemption by Note 9. However, under paras (a) – (c) the existence of a written delegated authority allows them to exempt fees for claims up to the authority limit, with VAT being charged on any that exceed it.

The new venture with BewarethePolecat.com is covered by the recent litigation at the Court of Appeal in Insurancewide/Trader Media, where it was decided that the taxpayer did constitute an insurance agent (in effect a sub-agent) who provided introductory services. The tests of targeting its own customer base (potential customers are in its website), recommending a product and being paid by take up are met.

Finally, the payment of £500,000 plus VAT towards the creating of an internet platform that is linked to the insurer’s own Quote system could well constitute the carrying out of work preparatory to the conclusion of a contract of insurance under Note 1(b) and should be treated as VAT exempt. Alternatively, it may be considered as ancillary to the main (future) supply of insurance commissions, and also treated as VAT exempt as a composite exempt supply, along the lines of Card Protection Plan.

Question 3

Harrison Jones Insurance Group

My Name
My address

Your name
Your address

Date

Dear Mr Jones,

Harrison Jones Insurance Group – VAT implications of proposed acquisition

Further to our discussion earlier this week, as agreed, this letter is to set out the points discussed and to provide you with our VAT advice in relation to your proposed acquisition.

1. What is a Transfer of a Going Concern?

There is no universal definition of what constitutes a transfer of a going concern in the UK.

However, normally the sale of the assets of a VAT registered or VAT registerable business will be subject to VAT at the appropriate rate.

The transfer of a business as a going concern (“TOGC”) for VAT purposes is the sale of a business including assets which must be treated as a matter of law, as 'neither a supply of goods nor a supply of services' by virtue of meeting certain conditions. Where the sale meets the conditions set out below, the supply will be outside the scope of VAT and therefore VAT is not chargeable.

2. TOGC Conditions

The conditions that will need to be met in order for the supply of a business including its assets to be outside the scope of VAT are set out in SI 1995/1268, regulation 5:

- a) The assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of an existing business, as that carried on by the transferor in relation to the whole or part transferred.

It was established in Zita Modes SARL (Case C-497/01) and C&E v Dearwood Ltd [VTD1557] that the correct test to be applied is whether the business “could”, not whether it “would” be carried on without interruption after the transfer.

- b) The effect of the transfer must be to put the new owner in possession of a business which can be operated as such. The sale of a few assets on their own will not constitute a TOGC as established in **J.P. Neville v Commissioners [VTD 10128]**.
- c) The business or part of a business must be a 'going concern' at the time of the transfer. A business can still be a 'going concern' even though it is unprofitable, or is trading under the control of a liquidator or administrative receiver.
- d) There must not be a series of immediately consecutive transfers of the business.
- e) Where the seller of the business or part of the business is registered for VAT, the purchaser must be registered or at the date of the transfer be required to be registered for VAT because all of the conditions for compulsory registration are met, or have been accepted for voluntary registration. This condition is not met if the purchaser is not registered and is not required to be registered for VAT.
- f) There must be no significant break in the normal trading pattern before or immediately after the transfer. A short period of closure which does not significantly disrupt the existing trading pattern e.g. for redecoration will be ignored as established in **The Old Red Lion Restaurant v Commissioners [VTD 1446]**.

In summary, in deciding whether a transaction amounts to a TOGC, regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another.

In the end, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern, the activities of which he could carry on without interruption. See **Kenmir v Frizzell**

3. Should VAT be charged on Land and Property?

There are extra rules for determining whether VAT should be charged on the transfer of land and buildings even if the rest of the transfer qualifies as a TOGC.

If the vendor is transferring land or buildings:

- on which he has opted to tax or
- which are new (less than 3 years old)

provided the purchaser has opted to tax the land or buildings (using form VAT 1614A), notified HMRC on or before the date of transfer and notifies the vendor no later than the date of transfer that the option to tax will not be dissaplied, the transfer of the land or buildings can be included within the TOGC. See **Chalegrove Properties Ltd v Commissioners [VTD 17151]**.

4. Will the proposed acquisition qualify as a TOGC?

Given the above, it is my view that the proposed acquisition will qualify as a TOGC and will be outside the scope of VAT. Obviously without formal clarification from HMRC, it is impossible to be certain as to how HMRC would view the transaction, but I believe there are good grounds for arguing that this transaction is a TOGC.

The case for the acquisition qualifying as a TOGC could be further strengthened if the sale and purchase agreement contains as non-competition clause i.e. that HG would not be operating in this particular field following the acquisition.

5. VAT Group Considerations

HJ will need to be aware of a potential self-supply charge that could apply once HJ has acquired part of HG's business. This is covered under **Section 44, VAT Act 1994**.

This part of the legislation states that where a business, or part of a business, carried on by a taxable person is transferred as a going concern to any member of a VAT group and the transfer of any 'chargeable assets' involved is treated as neither a supply of goods nor a supply of services, then, subject to below, the chargeable assets are treated (at the time of the transfer) as being supplied to the representative member of the group for the purpose of its business and supplied by that member in the course or furtherance of its business.

Assets are 'chargeable assets' if their supply in the UK by a taxable person in the course or furtherance of his business would be a taxable supply (and not a zero-rated supply). The supply is at the 'open market value' of the chargeable assets.

This provision does not apply in situations where the representative member is entitled to full credit for input tax on supplies, the assets were assets of the taxable person transferring them more than three years before the day on which they are transferred or the chargeable assets are covered by the capital goods scheme.

This will need to be considered further as it is likely there will be a self-supply charge to HJ in respect of the 'equipment' being transferred across.

6. Input Tax Recovery of Professional Costs

Although the transfer of a going concern is not a supply for VAT purposes, this should not prevent the deduction of input tax on related expenses.

As the part being acquired by HJ is to be used to make both taxable and exempt supplies, any related input tax in relation to the acquisition will become a residual cost. On the understanding HJ recovers around 60% of its input tax, it should be possible for HJ to recover a similar proportion in relation to the professional costs incurred.

This was established in **Commissioners v UBAF Bank Ltd** case.

7. Retention of Business Records

HG should retain the business records although a clause should be included within the sale and purchase agreement for HG to make available sufficient information to enable HJ to fulfil its VAT compliance obligations.

I trust this provides you with the information you require at this stage and if I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely

An Advisor
VAT Consultant

Question 4

Property & Construction Services

Answer 1

Dear Mr & Mrs James

Further to your request for VAT advice regarding your proposed development, I write to inform you that the works described above will qualify as a zero rated construction of a new dwelling [VAT Act 1994, Sch 8 Group 5 Note (18); SI 1995/280] provided that the existing building is demolished completely to ground level, other than the party walls . The cellar may also remain. As the retention of the façade is a condition of planning consent, this does not have any impact on the VAT liability, and the works remain zero rated. You are not required to issue any form of certification for this to your developer.

Yours etc

Answer 2

Dear Bob,

If the company were to rent the remaining property, that rental income would be income exempt from VAT. In late 2008 HMRC issued guidance in the above circumstances, to help builders who might want to let a dwelling in the short term.

[VAT Information Sheet 07/08, Sept 2008, following Curtis Henderson & Briararch]

The guidance allows builders to carry out a simple check to see if the input tax recovered on the dwelling is below a de minimis level and can still be recovered. The calculation is based on the estimated economic life of the building compared to the length of the proposed letting, and applied to the input tax recovered. For example, if the economic life of the building were 10 years, and the period of the proposed letting is 1 year, then the calculation would be as follows;

$$21875 \times 1/10 = \text{£}2187.50$$

The £2187.50 is the attributable input tax, and as this does not exceed £7500, or 50% of Bob's total input tax, then no adjustment is required.

Yours etc

Answer 3

Dear Village Hall Committee,

In normal circumstances, extensions and enlargements of existing buildings are standard rated. But, if it can be demonstrated that certain conditions are met, and use of the extra space qualifies as a "relevant charitable use", then it may be possible for the works to be zero rated. [VAT Act 1994, Sch 8 Group 5, Notes (16) & (17); SI 1995/280; SI 2002/1101]

Please see more information below;

USE

Use of a village hall, or an annexe, qualifies as "relevant charitable use" if there is a high degree of local community involvement in the running and activities of the hall, and the activities are of a wide variety in nature including social, recreational and sporting.

WORKS

If the addition were to be constructed as an annexe rather than an extension or enlargement, that annexe must be capable of functioning independently from the existing building (but may share services such as electricity and water), must have its own independent main access, and the whole (or part) of the annexe must be intended solely for relevant charitable use, then the works can be zero rated. This annexe could then be used independently of the main village hall.

If this is the route to be followed, the then committee will need to issue a certificate to the main contractor/developer, which contains details of the address of the building, name and charity registration number of the organisation receiving the works, the estimated date of completion and value of the supply, name address and VAT number of the main contractor

Conclusion

Should the village hall committee be able to satisfy both the annexe and relevant charitable use conditions as described above, then the works can be zero rated upon the production of the relevant certificate to the builder/developer.

Answer 4

Dear Bob,

The works you are potentially to engage in have differing VAT liabilities.

The conversion of the barn into a residence for Mr Joiner would be described as “qualifying services supplied in the course of a residential conversion” - and as such, subject to VAT at the reduced rate of 5%. You will be able to recover VAT on all building materials ordinarily incorporated or installed as fittings in a residential building when you purchase them for this development, and recharge those supplies and your services at 5%. [VAT Act 1994, s 29A (1) (2), Sch 7A Group 6 Items 1 & 2; FA 2001, ss97, 99 Sch 31]

This relates to the building only - and would not cover the landscaping Mr Joiner has asked you to do - this work would be subject to VAT at the standard rate.

Question 5

Blundell Lighting Company Ltd

Dear Mr Woods

Value Added Tax

Thank you for your letter dated....

There are a number of VAT issues in your letter and for ease of reference I will comment on each issue using separately headed paragraphs.

Republic of Ireland

I understand the components are not delivered direct from the UK to customers but from the UK to your warehouse in Dublin. At the time of the transfer of the components a specific customer has not been found for them. The transfer of goods from a UK business to another EU country in order for the UK business to supply the goods within that country is deemed to be a supply for VAT purposes at the time the goods are moved. This provision applies even though the goods are initially transferred within the same legal entity. The VAT implications are as follows:

- There is a “supply” between the same legal entity i.e. the UK and the warehouse in Dublin;
- Blundell Lighting Limited (“BLC”) will therefore need to register for VAT in Ireland in order to account for acquisition VAT in Ireland (see below);
- BLC will need to raise an internal invoice quoting BLC’s Irish registration number;

- The movement of goods will need to be reported on an Intrastat supplementary declaration as the value is in excess of the threshold;
- The supply by BLC from its Dublin warehouse to customers in the Republic of Ireland is treated as an Irish domestic supply with BLC charging Irish VAT.

Acquisition VAT is accounted for by converting the internal invoiced amount to Euros, applying Irish VAT at the rate in force, declaring the self generated VAT charge to the Irish authorities on the relevant Irish VAT return .On the same VAT return as acquisition VAT is declared, the VAT can be recovered as input tax.

I am not an expert in Irish VAT but I can provide you with details of where to apply for registration in Ireland and the contact details of an Irish VAT consultant if you wish. Unfortunately registration should have been applied for from the outset and the Irish authorities may impose penalties.

Germany/Austria

I understand that although you will deliver the components direct to Austria, your invoice will be raised to your parent company in Germany. BLC can zero rate the supply of the components as the supply by BLC involves the removal of the components to another member state:

- BLC quotes its German parent's VAT number on the invoice;
- BLC records the supply on an EC sales list i.e. quoting the German company's VAT registration and value of the goods;
- The goods should be reported on an intrastat supplementary declaration as a movement of goods to Austria.

Research and Development

BLC's VAT treatment of the monthly invoices issued to the German parent is correct. UK VAT is not chargeable as the place of supply is where the customer belongs. The German parent will be responsible for accounting for German VAT on the invoices using a procedure known as reverse charge.

The reverse charge procedure requires the German parent to convert the invoiced amounts to sterling and add German VAT at the rate in force. The self generated VAT charge can be reclaimed as input tax.

BLC is required to include a reference to the reverse charge on its invoices to Germany. The reference can be the legal reference or a simple statement such as "this invoice is subject to the reverse charge in your country". With effect from 1 January 2010, BLC has a requirement to submit an EC Sales list for services. This is exactly the same form and format as currently used for goods but the code is "3". The sales list for services can either be submitted quarterly (calendar quarters) or if preferable added to the monthly sales list for goods.

Management Charges

The rules relating to the place of supply of services changed on 1 January 2010. The basic rule is that with certain exceptions services are supplied where the customer belongs. Prior to 1 January 2010 the basic rule was services were supplied where the supplier belonged and it was only specified services which were supplied where the customer belonged. The specified services did not include management services.

BLC was correct to charge VAT on the November invoice but future invoices will not be subject to VAT and the procedures explained above (research and development) will apply.

I hope this letter is helpful. If you require any clarification or I can be of further assistance please do not hesitate to contact me.

Yours sincerely