



Practical Tax People

Association of
Taxation Technicians

May 2015 Examination

PAPER 6

VAT

Part II Suggested Solutions

1. (10 marks)

1)(a) (Max 1 mark)

Selling shares is exempt from VAT. (½ mark)

VAT attributable to selling shares cannot be recovered. (½ mark) (unless the shares are sold to someone living outside the EU) (½ mark).

1)(b) (Max 2 marks)

Selling the trade and assets will be a taxable supply (½ mark) unless the transfer qualifies as a transfer of a going concern (½ mark) so that the transfer is outside the scope of VAT (½ mark).

In both cases, VAT incurred that is directly and immediately (½ mark) linked to the business being transferred should be recoverable in line with the transferred business's VAT recovery status (½ mark).

2) (Max 4 marks, 1 mark for each)

1. The assets must be sold as a 'going concern'.
2. The assets are to be used by the purchaser with the intention of carrying on the same kind of business as the seller.
3. Where the seller is a taxable person, the purchaser must be a taxable person already or become one as the result of the transfer.
4. Where only part of a business is sold it must be capable of separate operation.
5. There must not be a series of immediately consecutive transfers.
6. Where the seller has opted to tax a building being transferred, the purchaser must also do so and notify HMRC by the date of transfer.
7. There must be no significant break in the normal trading pattern before or immediately after the transfer.

3) (Max 3 marks, ½ mark for each)

An ATT member:

1. must avoid conflicts of interest and situations where there may be a perceived conflict of interest (½ mark);
2. should acknowledge a conflict or potential conflict of interest as soon as he or she becomes aware of it and immediately seek to resolve it (½ mark);
3. must consider whether it is appropriate to continue to act if a conflict cannot be resolved (½ mark);
4. must inform the client about the conflict or potential conflict if the member decides it is appropriate to continue to act (½ mark);
5. must advise the client to obtain independent advice where appropriate (½ mark); and
6. must advise the client in writing including any agreement that the member continues to act (½ mark).

2. (20 marks)

1) (Max 3 marks)

If Elos UK supplies exempt services it will be classed as partially exempt. (½ mark)

Any VAT Elos UK incurs that is directly attributable to its exempt supplies will be irrecoverable (½ mark).

Any VAT Elos UK incurs that is directly attributable to its taxable supplies will be recoverable (½ mark).

Any VAT that is not directly attributable to either taxable or exempt supplies or is attributable to both taxable and exempt supplies must be recoverable in line with the partial exemption standard method (½ mark).

To calculate VAT recoverable under the standard method, Elos UK must calculate the proportion of taxable supplies as a percentage of total supplies each quarter and apply that percentage to non-directly attributable VAT for the quarter (1 mark).

If the VAT attributable to exempt supplies is no more than £625 per month and no more than 50% of total input tax, Elos UK may treat that VAT as de minimis input tax and recover it in full (1 mark).

2) (Max 6 marks)

Salary costs are outside the scope of VAT (½ mark).

VAT on brand licence from Elos Germany will be incurred under the reverse charge (½ mark).

Residual VAT = $(155,000 \times 20\%) + (45,000 \times 20\%) + (34,000 \times 20\%) + (37,000 \times 20\%) = £54,200$ (1 mark).

Irrecoverable VAT percentage under the standard method is $27,450,000 / (3,560,800 + 27,450,000) = 88.52\%$ (½ mark).

Rounded up to 89% as residual VAT is less than £400,000 per month on average (½ mark).

Recoverable residual VAT = $£54,200 \times 89\% = £48,238$ (½ mark).

Irrecoverable residual VAT = $£54,200 \times 11\% = £5,962$ (½ mark).

Directly attributable exempt input tax = $£178,000 \times 20\% = £35,600$ (½ mark).

Average monthly exempt input tax = $(35,600 + 5,962) / 12 = £3,463$ per month therefore not de minimis (1 mark).

Total recoverable VAT for the year to 30 April 2015 = $£48,238$ (½ mark).

3) (Max 4 marks)

Elos UK should make an unprompted (voluntary) disclosure to HMRC (½ mark) notifying them of the amount of input tax that Elos UK has over-recovered and output tax that it has over-declared (½ mark).

HMRC may impose a penalty. The rate of penalty depends on the type of the disclosure (prompted or unprompted) (½ mark) and whether the error was careless, deliberate, and/or concealed (½ mark).

Elos UK may be able to argue this was not a careless error (½ mark) and therefore incur no penalty (½ mark).

If HMRC decide reasonable care was not taken, HMRC may charge a penalty of between 0% and 30% (½ mark) of potential tax lost (½ mark).

4) (Max 2 marks)

Tax avoidance is the use of legitimate means to reduce the incidence of tax. Tax advisers may properly advise or assist their clients to reduce their liability to tax, but the courts are wary of schemes or arrangements whose sole purpose is to avoid tax (1 mark).

Tax evasion is unlawful. A taxpayer who dishonestly withholds or falsifies information or conceals material facts for tax evasion purposes may be subject to criminal proceedings or suffer civil penalties. A tax adviser who is a party to tax evasion is subject to the sanctions of the criminal law (1 mark).

5) (Max 3 marks)

A tax adviser who becomes aware that a client is evading or seeking to evade tax should advise the client to make full and proper disclosure to HMRC. (1 mark).

A tax adviser who becomes aware that information or reports previously supplied to HMRC are false or misleading should, with the client's authority (otherwise the duty of confidentiality owed to the client would be breached), inform HMRC that the information or report cannot be relied upon (1 mark).

If the client refuses to allow the tax adviser to disclose, the tax adviser should urge the client to make full and proper disclosure personally. If the client refuses to do so, the tax adviser should cease to act for the client (1 mark).

6) (2 marks)

The double entry needed to correct the overclaimed VAT is:

Dr Expenses (1 mark)

Cr VAT control account (1 mark)

with the disallowed input tax.

Note: candidates who Dr VAT control account and Cr Bank will receive 1 mark.

3. (15 marks)

Your address

My address

Dear Ms Weakleg (Format - 1 mark)

Date

Further to your request:

1) (2 marks, including format mark)

Services and goods used to refurbish the residential flats are reduced-rated ($\frac{1}{2}$ mark) since the flats have been empty for more than two years ($\frac{1}{2}$ mark).

2) (1 mark)

Services and goods used to construct the hotel will be standard-rated. (1 mark).

3) (2 marks)

To the extent services and goods are used to construct the shops, they will be standard-rated ($\frac{1}{2}$ mark).

To the extent services and goods are used to construct the flats, they will be zero-rated ($\frac{1}{2}$ mark) except the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity (1 mark).

4) (10 marks)

Selling the hotel and shops will be standard-rated if sold within three years of completion (1 mark).

If sold more than three years after completion, the sale of the hotel and shops will be exempt by default (1 mark).

Letting the hotel will always be exempt by default, subject to the option to tax (1 mark).

Letting the flats will always be exempt while the first grant of a major interest in each of the flats will be zero-rated (1 mark).

A major interest is the freehold or a lease of more than 21 years (20 years in Scotland) ($\frac{1}{2}$ mark).

Building Securities plc should consider opting to tax the hotel and shops as it would be entitled to claim input tax on the construction costs (1 mark).

Opting to tax would mean that Building Securities plc would have to charge VAT on the sale (after 3 years) or letting of the hotel and shops (1 mark).

The option to tax will not have effect on the letting or sale of the flats as they are residential and will remain exempt or zero rated (1 mark).

An option to tax must be notified to HMRC within 30 days of being made ($\frac{1}{2}$ mark).

Once made, an option to tax cannot be revoked within 20 years except during the first six-month cooling-off period (1 mark).

The option to tax applies to the whole building and therefore the shops cannot be opted separately from the hotel (1 mark).

I trust that this clarifies the position. Please let me know if I can be of any further assistance.

Kind regards

T Adviser
4. (15 marks)

To: Mrs Jones
From: T. Adviser
Date: x May 2015
Subject: VAT registration requirements (Format - 1 mark)

1) (4 marks, including format mark)

Dear Mrs Jones

Thank you for your enquiry regarding VAT registration.

You will need to register for VAT in the UK if your turnover for the past 12 months exceeds the VAT registration threshold which is currently £81,000 (1 mark).

You would also need to VAT register if your expected turnover, at any time, for the next 30 days is more than the VAT registration threshold (1 mark).

Assuming the historic turnover test applies, you must notify HMRC within 30 days of the end of the month in which you exceed the threshold (½ mark) by registering online or sending a VAT1 form (½ mark).

2) (Max 2 marks)

One advantage of voluntary registration is that you will be entitled to claim input tax attributable to your taxable supplies (1 mark).

One disadvantage is that you will need to charge your clients VAT which may increase the cost to your clients if they are not VAT registered or registered and not entitled to claim VAT (1 mark).

Credit will be given for any reasonable remark.

3) (Max 2 marks)

Your services will be taxable at the standard rate in the UK to the extent they are provided to UK-established customers (1 mark).

Consulting services provided to business recipients in other EU countries will be outside the scope of UK VAT (1 mark). Proof that the recipient is in business in another member state should be obtained if the recipient is not VAT registered in another member state (½ mark).

4) (Max 5 marks)

You may claim VAT that is directly and immediately linked to taxable supplies (1 mark).

You may also claim VAT this is directly and immediately linked to supplies that are outside the scope of UK VAT but would be taxable if made in the UK i.e. the services provided to French and Italian clients (1 mark).

You may claim only 50% of the VAT you incur on renting your car as it will be used for both business and private purposes (1 mark).

You may claim VAT on all fuel purchased so long as you apply the scale charge which takes into account fuel used for private purposes by applying a corresponding output VAT charge (1 mark). (There are alternatives to this treatment, which we can discuss at a later date, if required.)

VAT incurred in France and Italy may be claimable via an EC Refund claim submitted to HMRC but we will need to check the rules on what VAT can be claimed in those countries on hotels, meals, fuel,

etc. (1 mark).
5) (Max 2 marks)

Once you are registered you will need to submit VAT returns. These are usually quarterly although you would be able apply to HMRC to submit an annual return as your taxable supplies will be under £1.35m. (1 mark).

You will also need to submit an EC Sales List quarterly to report the supplies you make to VAT registered businesses in other EU member states (1 mark).

I trust that this clarifies the position. Please let me know if I can be of any further assistance.

Kind regards

T Adviser