

minutes

Committee	CIPFA Value Added Tax Committee
Date	2 March 2017
Venue	CIPFA, 77 Mansell Street, London E1 8AN
Present	Mike Revis (Coventry City Council) – Chair Sarah Bagley (Leeds City Council) Stephen Bevis (Cambridge City Council) Jo Buckmaster (Warwickshire CC) Marie Campbell (HMRC) Alan Carey (HMRC) Graham Coleman (Essex CC) Peter Gladdish (PSTAX) Gwyneth Grahame (Caerphilly County Borough Council) Stephen Gucciardi (Deloitte) Ian Harris (Leicester City Council) Ian Moules (HMRC) Simon Mulliner (Lancashire CC) Karen Regan (East Sussex CC) Paul Rogerson (Cumbria CC) Kelly Wilson (Gateshead MBC)
In attendance	Mark Jenkins (CIPFA Secretary)

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- | | Action |
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| 1 Welcome and apologies for absence | |
| 1.1 Apologies were received from Peter Briant, Nina Phillipidis, Mark Dyer, David Ogilvie and Andy Powell.

Mike Revis welcomed Marie Campbell and Ian Moules to the Committee. Marie Campbell replaces Jo Turner as HMRC advisor on local authorities/Section 33 issues. Ian Moules works with David Ogilvie in the public bodies team, and will be familiarising himself with the work of the Committee over the next six to nine months.

Mike Revis also welcomed Stephen Gucciardi, Deloitte, who was deputising for Mark Dyer. | |
| 2 Minutes of the last meeting | |
| 2.1 The minutes of the meeting held on 3 November 2016 were accepted as an accurate record. | |

3 Matters arising

The Committee considered the matters arising and items carried forward from 3 November 2016:

3.1 3.2 Property search charges

Following HMRC's decision in November 2016 that VAT must be imposed on CON29 property search fees, it was confirmed that implementation is expected no later than 1 April 2017. HMRC also confirmed that no retrospective assessments will be issued in respect of property search fees.

The Committee requested clarification regarding the consequences for those authorities required to issue retrospective VAT invoices for services prior to 1 January 2017, similar to the current Royal Mail case, and the likelihood of this resulting in claims and therefore a financial loss. HMRC agreed to give this point consideration and will endeavor to formulate advice as to how local authorities can protect themselves against future claims.

HMRC

3.2 3.3 Section 33 capping provisions

Ian Moules reported that a submission recommending the extension of the cap to four years will be passed to the minister after Purdah ends on 22 March 2017. HMRC will report back on progress at the next meeting.

HMRC

3.3 3.4 Local authority cemeteries and crematoria – memorials

Following the November 2016 meeting, David Ogilvie had sought further clarification on a number of terms used in the Committee's briefing. Mike Revis agreed to discuss this with David Ogilvie subsequent to the meeting, while Ian Moules will also follow up with David Ogilvie in order to get better acquainted with the issues under consideration.

MR/HMRC

3.4 3.5 Park and ride

The Committee approved the HMRC draft guidance on park and ride subject to a few minor comments. HMRC confirmed this guidance will be published soon after 22 March 2017 (end of Purdah) and will apply from 1 June 2017. HMRC emphasised that it generally views park and ride as constituting a 'single supply' subject to VAT at the standard rate, although will consider examples felt to be 'mixed supply' on a case-by-case basis. Ian Harris requested it be minuted that local authorities do not agree with the 'single supply' interpretation, as this is based on the Purple Parking decision which local authorities believe is not relevant to their situation.

HMRC

3.5 3.6 Voluntary aided schools and de minimis/Voluntary Aided Schools VAT Guidance

Marie Campbell informed the Committee that she is due to meet with colleagues next week to finalise this guidance, which will include Sarah Bagley's previously submitted flowchart. Once internally approved by HMRC, the guidance will be circulated to the Committee for approval.

HMRC

3.6 7. Better Care Fund

Alan Carey reported to the Committee his views on the viability of a Better Care Fund (BCF) working party to look into the differing VAT accounting arrangements which currently exist. His preference would be to informally engage with those volunteer authorities previously identified by Mike Revis to enable HMRC to gain a better understanding of the issues, with a view to producing a guidance note outlining a set of fundamental principles which local authorities can follow. It was agreed that the activities of the working

party would not constitute an inspection. Alan Carey will contact Mike Revis to arrange an initial meeting in April to establish a framework and lines of communication.

HMRC

3.7 **10.1 VAT efficient welfare services**

Given the current political and economic climate, it was felt that further work in this area would possibly disrupt and undermine existing arrangements and so will not be pursued. Mike Revis reported a recent conversation with Mark Dyer, who had suggested that a wider review of all alternative welfare provision arrangements, with appropriate input from the Committee, could form the basis of an alternative submission at a later date.

The Committee agreed, therefore, to discharge this item from the agenda and resume consideration at a more appropriate juncture.

MJ

3.8 **6. VAT Government and Public Bodies Guidance**

The Committee approved the submitted guidance, pending resolution of the following queries:

- **8150: Neighbourhood Nursery Initiative**
Ian Harris queried whether all nursery care is non-business. Marie Campbell will check whether the guidance on 8150 comes within the scope of the Childcare Act 2006 and report back to the Committee.
- **4210: Definition (of local authorities)**
Ian Harris queried whether health and wellbeing boards are within the scope of Section 33 as outlined in the guidance. Marie Campbell will follow up with Ian Harris subsequent to the meeting.
- **7700: School private fund income**
Simon Mulliner questioned whether the 'local authority' is legally responsible for a wider range of activities, and suggested that it is actually the 'governing body' at a voluntary aided school that is responsible for a wider range of activities. Marie Campbell will follow up with Simon Mulliner subsequent to the meeting.

Marie Campbell also confirmed that Notice 749, which is out of date, is currently under review.

HMRC

3.9 **7. Car parking charges in country parks**

Ian Moules summarised the HMRC letter submitted to the Committee, which concludes that the provision of car parking in natural sites (ie rural and semi-rural locations) is not part of a special legal regime and so not within the scope of Section 41A of the VAT Act 1994. Jo Buckmaster mentioned that there are a number of by-laws/parking orders which may support the interpretation that a special legal regime applies, and agreed to forward these examples to Ian Moules for further consideration.

On the issue of competition, the letter states that HMRC would only be willing to consider representations that there would not be a distortion of competition if only the public body can legally provide the car parking within the specified area, and there are no alternative providers of car parking within reasonable travel distance. Jo Buckmaster raised the point that no private businesses want to provide this type of parking as it is heavily subsidised and loss-making, and therefore no element of competition is

involved. Jo agreed to provide further evidence on this point for further consideration by HMRC.

JB

3.10 **7. Making Tax Digital (MTD)**

At the November 2016 meeting of the CIPFA VAT Committee Ian Harris submitted a letter arguing for local authorities to be exempt from the MTD requirement to maintain digital records and update HMRC at least quarterly. HMRC appears to have rejected these arguments but without explanation. Ian Harris therefore agreed to resend this letter to Ian Moules, who will raise it with MTD colleagues at HMRC. In the meantime, Ian Harris will attend the up-coming JVCC/MTD subgroup meeting scheduled for 14 March 2017.

HMRC/IH

3.11 **10.1 HMRC correspondence guidance**

The Committee approved HMRC's revised guidance note/technical query template and agreed that these should be disseminated as soon as possible and used going forward.

One query remained, however, regarding the problems encountered in respect of the e-mail protocol, whereby local authorities have a VAT e-mail protocol in place but this appears to be VAT specific rather than generic to all HMRC areas. Alan Carey explained that if HMRC requests an e-mail protocol where one is already in place, the authority should just send a copy of its existing protocol to the HMRC department it is dealing with.

HMRC/Ctee

3.12 **13.1 Application to become a combined authority**

HMRC confirmed that it considers requests from combined authorities for inclusion in Section 33 only once the application is received, which is normally after establishment. A generic category within Section 33 giving automatic entitlement will be investigated by HMRC in the future.

HMRC

3.13 **13.3 Trade waste**

HMRC is currently reviewing evidence as to whether non-business treatment for councils carrying out commercial waste collection 'distorts market competition', ahead of a second challenge from the private sector. Ian Moules informed the Committee that the challenge is expected to be heard by the High Court late in 2017.

4 **Joint VAT Consultative Committee**

The minutes of the Joint VAT Consultative Committee meetings held on 20 July 2016 and 12 October 2016 were circulated. Sarah Bagley noted that at the October 2016 meeting the JVCC discussed a consultation document published by HMRC on issuing penalties for participating in VAT fraud, and considered this a possible point of vulnerability for S151 officers, especially given the number of responsibilities and communication with HMRC which is delegated.

5 **VAT briefs**

The Revenue and Customs Briefs issued since the last meeting were noted.

6 **Land & Property Liaison Group (LPLG)**

Karen Regan provided a brief read-out of the main points of interest discussed at the October 2016 meeting of the LPLG, which concerned local development orders, annexes and co-ownership.

- 7 **Brexit**
 Alan Carey will circulate among the Committee the contact details of the CRM for the Department for Exiting the European Union for any comments or concerns local authorities may have regarding the impact of Brexit. **HMRC**
- 8 **Accountable Care**
 Karen Regan's briefing considered the difficulties which may arise in accountable care organisations comprising a number of discrete bodies with differing VAT regimes. The briefing suggested that a joint working group be established, consisting of representatives from the CIPFA VAT Committee, Department of Health and HMRC, with a view to issuing clear VAT accounting guidelines applicable to accountable care. Alan Carey agreed to raise this issue with colleagues, but in the meantime, the Committee decided this item should be merged with 3.6 and looked at by the BCF working party. **HMRC**
- 9 **Local Authority VAT Liability Index**
 The Committee is awaiting confirmation from HMRC that the following VAT treatment, as agreed at the last meeting, is correct:
- 'Overpayments (off street and provided not free parking)' – outside the scope of VAT
 - 'Cycle training' – exempt when provided by an eligible body such as a local authority
- Marie Campbell will follow up with David Ogilvie and confirm in due course. **HMRC**
- 10 **TISonline VAT information stream, discussion forum and Section 33 VAT Network**
 Mark Dyer and Mark Jenkins are due to meet on 17 March 2017 to discuss updating requirements for the TISonline VAT information stream. **MJ/MD**
- 11 **Any other business**
- 11.1 **Licence to occupy**
 Peter Gladdish raised the issue of local authorities granting a significant number of rights relating to land and property, and asked whether a tailored list of liabilities could be produced that would consolidate the guidance currently contained in a variety of publications. Peter Gladdish agreed to draft a briefing, including a number of examples, and send it to Mike Revis for initial consideration. **PG**
- 11.2 **Apprenticeship levy**
 Ian Harris reported that issues concerning the VAT treatment of the apprenticeship levy had recently arisen at a local authority. While seeking clarification on this point prior to the CIPFA VAT Committee meeting, Ian Harris received confirmation from David Smith, HMRC contact for the HFMA VAT Technical Sub-committee, that training funded by the levy will be exempt from VAT as 'government funded training', while training provided by 'non-eligible bodies' and funded through 'top-up payments' will be standard rated.
- 11.3 **IR35 Rules**
 HMRC confirmed that the IR35 online tool would be available later today.

12 **Date of next meetings**

The next meetings will be on Thursday 6 July 2017 and Thursday 2 November 2017.