

minutes

Committee	CIPFA Value Added Tax Committee
Date	5 July 2018
Venue	CIPFA, 77 Mansell Street, London E1 8AN
Present	Mike Revis (Coventry City Council) – Chair Stephen Bevis (Cambridge City Council) Jo Buckmaster (Warwickshire CC) Nick Burrows (PSTAX) Alan Carey (HMRC) Graham Coleman (Colchester Borough Council) Ian Harris (Leicester City Council) Simon Mulliner (Lancashire CC) David Ogilvie (HMRC) Andy Powell (Deloitte) Karen Regan (East Sussex CC) Karen Thomas (Portsmouth City Council) David Webb (HMRC) Kelly Wilson (Gateshead MBC)
In attendance	Mark Jenkins (CIPFA Secretary)

- | | Action |
|--|---------------|
| 1 Welcome, apologies for absence and membership issues | |
| 1.1 Mike Revis welcomed everyone to the meeting. Apologies were received from Sarah Bagley, Gwyneth Grahame, Nina Phillipidis, Paul Rogerson and Peter Briant. | |
| 1.2 David Webb has taken over from Ian Moules and will be attending Committee meetings going forward. | |
| 2 Minutes of the last meeting | |
| 2.1 The minutes of the meeting held on 1 March 2018 were accepted as an accurate record. | |

3 Matters arising

The Committee considered the matters arising and items carried forward from 1 March 2018:

3.1 **3.6 Voluntary aided schools and de minimis/Voluntary Aided Schools VAT Guidance**

Karen Regan provided an update on two issues which are currently being considered at the Land and Property Liaison Group (LPLG):

- a) It has been confirmed that schools and their diocese recognised as charities by the Charity Commission must also register their charitable status with HMRC (in order to enjoy favourable VAT status) – this is done through the submission of a certificate. However, the issue of whether any retrospective action will be pursued against those bodies that have not registered appropriately with HMRC remains unresolved. Karen Regan will follow up via the LPLG at its next meeting in September.
- b) With regard to the issue of annexes following the Colchester decision, a brief from HMRC is awaited (this could impact on zero-rating new classrooms etc at VA schools).

KR

HMRC

[Subsequent to the meeting, HMRC updated VAT Notice 708: Buildings and Construction, which clarifies the position with regard to charitable status and the zero-rating of buildings. It does not, however, address the issue of retrospection.]

3.2 **7. Better Care Fund (BCF)/8. Accountable Care (ACO)**

David Ogilvie confirmed that the VAT issues around integration between the NHS and local authorities continue to be investigated, specifically by Mike Barlow at HMRC and Paul Jones at the Department of Health and Social Care (DHSC). Further meetings are also proposed with NHS England and the GMCA. David Ogilvie admitted that it will be a challenging task to establish some common VAT principles given the constantly changing landscape and the plethora of delivery models, and that the final position may involve adopting a 'case-by-case' approach.

HMRC

With regard to the previously submitted briefing, which argued for all staff seconded between public bodies and NHS bodies to be treated as outside the scope of VAT, David Ogilvie confirmed that it is unlikely that this concession will be considered going forward as it is inconsistent with the current legislation.

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

David Ogilvie confirmed that no new guidance has been published (other than that confirmed at this meeting). This item will be kept on the agenda as a standing item to allow HMRC to check with the Committee on future guidance prior to publication.

HMRC

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

David Webb confirmed receipt of Jo Buckmaster's letter of 4 June 2018 (which answered some points raised in the HMRC memo of 14 February 2018) and indicated that HMRC remains unconvinced (particularly in relation to the applicability of byelaws and parking orders) that the provision of paid off-street parking should be treated as non-business for VAT purposes. Jo Buckmaster was invited, however, to provide more information on how byelaws govern the operation of car parks at country parks to allow further consideration by HMRC.

JB

- 3.5 **7. Making Tax Digital (MTD)**
 Following HMRC's MTD presentation at the March 2018 meeting, the Committee agreed that there were no major concerns relating to Phase 1, subject to there being available and appropriate API bridging software. HMRC confirmed that a list of companies providing bridging software to help authorities meet API requirements will be available later in the year. Mike Revis also confirmed that, as agreed, he will submit a briefing outlining those areas that operate outside the normal local authority accounting packages, for example schools, museums and sports centres, so that the HMRC MTD team can consider how best to address these issues. MR
- 3.6 **8. VAT Notice 749: Local Authorities and Similar Bodies**
 David Ogilvie confirmed that this is due for publication shortly and will inform the Committee when available online. HMRC
- 3.7 **9. Licence to occupy v supply of services**
 Karen Regan informed the Committee that the LPLG is looking to reconvene a working party to update *VAT Notice 742: Land and Property*, and will update the Committee on progress at the next meeting. KR
- 3.8 **12. Children's services trusts**
 The Committee and HMRC have reached an agreed position on children's services trusts, as outlined in a recent exchange of letters attached to the agenda. HMRC will update guidance in due course, but agreed to the publication of these letters as an interim measure. HMRC
- 3.9 **10.2 Electric vehicles**
 David Ogilvie confirmed that replies to the questionnaire can be sent to his inbox. Mark Jenkins will issue the questionnaire via CIPFA channels as soon as possible. MJ
- 3.10 **6. On-street markets**
 The Committee noted the recent exchange of letters relating to on-street markets, and HMRC confirmed that guidance will be updated in due course to reflect the information provided by Ian Harris that on-street markets are generally run under street-trading powers. HMRC
- 3.11 **10.1 Elections**
 HMRC confirmed that VATGPB guidance will be reviewed in the light of the Committee's comments sent on 30 May 2018, which relate to elections in the following areas:
- combined authority mayoral elections
 - police and crime commissioners
 - joint local/parliamentary elections.
- Mark Jenkins will resend the Committee's suggestions to David Webb. MJ/HMRC
- 4 **Joint VAT Consultative Committee (JVCC)**
 The minutes of the JVCC meeting held in January 2018 were noted.
- 5 **VAT briefs**
 The Committee noted the HMRC VAT briefs issued since the last meeting.

6 **Partial exemption calculations**

Mike Revis raised the issue of a district council in the North West that has been challenged by HMRC as to whether its method of partial exemption was acceptable, in particular, the method of exempt income divided by total expenditure in a specific area was questioned. This is a method that just about all local authorities use when there is a small amount of exempt income in a typically non-business environment such as schools. It was noted that this method is also effectively applied (under custom and practice) by councils using the 1% calculation for schools, whereby VAT on expenditure can be aggregated for all schools and 1% included in the partial exemption calculation, on the grounds that exempt income in schools is always less than 1% of their total expenditure. Simon Mulliner pointed out that with councils now working on their 2017/18 calculations, there was some immediacy to the matter. Alan Carey confirmed that he is investigating this issue and will report back to the Committee.

HMRC

7 **Land and Property Liaison Group meeting 10 April 2018 update**

Karen Regan highlighted the following issues which were discussed at the April meeting of the LPLG:

- a) Phil Askew is now the new HMRC technical lead and chair of the LPLG.
- b) It was agreed that in future LPLG minutes will be published, but they will give only a broad outline of discussions and some material may be anonymised.
- c) The LPLG continues its investigation into HMRC's requirements regarding the signatory of the Option to Tax form.
- d) Ian Harris drew attention to an issue raised at the LPLG about the interaction of sports exemption and the 'block bookings rules'. HMRC's reply to the LPLG confirms the hire of a sports facility by a club meets the criteria to be exempt, whether 'block booked' or not, provided it is for the benefit of individuals taking part in sport, such as the club's members. However, the reply goes on to quote 'Stade Luc Varenne' that the hire of a stadium by a football club does not meet this last condition. Ian felt this implies commercial hirers of sports facilities are not within the exemption. Debate ensued as to what constitutes commercial and non-commercial bookings, with no firm conclusions reached, other than that a corporate customer is eligible for the exemption for supplies of sports facilities provided there is clear evidence that individuals will benefit from taking part in the sport.

Discussion moved on to the definition of sport and sports facilities – Ian noting that the 'Abbotsley' decision (with reference to 'Mesto Zamberk') confirms that, while sport does not have to be competitive, the facility hired must be designed or adapted for sports use, such as a swimming pool with lanes, starting blocks etc. Ian was concerned that this suggests a leisure pool may not be a sports facility, even though used for swimming which is clearly a sport. Once more, debate ensued with no firm conclusions reached, other than that a sports facility must be designed or adapted so that it may realistically be used for sport.

- 8 **CIPFA FAN Tax Advisory Service – Digital Tax Survey**
 Andy Powell outlined the survey which is soon to go out to local authorities – any comments/suggestions from the Committee should be forwarded to Andy as soon as possible. **Cttee**
- 9 **Brexit**
 The Committee did not note any new relevant issues.
- 10 **Local authority VAT liability index**
 David Ogilvie confirmed that colleagues are reviewing the VAT Liability Index to ensure that it reflects recent HMRC updates. **HMRC**
- 11 **TISonline VAT information stream, discussion forum and Section 33 VAT Network**
 Mark Jenkins and Jen Thompson are due to meet to discuss updating requirements for the TISonline VAT information stream. Mark Jenkins also confirmed that there are ongoing technical problems with the TISonline discussion forum e-alert functionality which CIPFA continues to investigate. **MJ/JT**
- 12 **Any other business**
- 12.1 **Trade waste collection**
 Ian Harris drew attention to the recent Upper Tribunal decision in the ‘Max Recycle’ case that trade waste collection *is* governed by a special legal regime, and that ‘Max Recycle’ has been refused permission to appeal (although the Court of Appeal may still grant leave). The Upper Tribunal is still to rule on the question of significant distortion of competition. Once resolved, the High Court will then hear the substantive Judicial Review application as to whether HMRC’s decision that local authority trade waste collection is non-business was lawful and reasonable. David Ogilvie confirmed that with one proviso HMRC, regardless of the outcome of any further representations in this case, does not anticipate any retrospective action.
- The proviso is that although the matter has yet to be heard by the Upper Tribunal, the case raises a State Aid point. There could be the argument that effectively local authorities receive illegal State Aid by not having to declare VAT on trade waste collection, while at the same time being able to reclaim the VAT incurred on related purchases under Section 33; if successful, this would raise the question of who must repay the illegal State Aid, which is normally the beneficiaries, ie local authorities. On the wider issue of the general compatibility of Section 33 with the State Aid rules, David Ogilvie reiterated that the European Commission appears to be relaxed about such VAT compensation schemes funding public services, provided there is no distortion of competition (which would probably need a CJEU ruling to determine).
- 13 **Date of next meeting**
 The next meeting is scheduled for 1 November 2018.