

minutes

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| Committee | CIPFA Value Added Tax Committee |
| Date | 1 November 2018 |
| 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) Peter Briant (HMRC) Jo Buckmaster (Warwickshire CC) James Clarke (HMRC) Peter Gladdish (PSTAX) Gwyneth Grahame (Caerphilly Council) Ian Harris (Leicester City Council) Scott Macdonald (HMRC) Simon Mulliner (Lancashire CC) David Ogilvie (HMRC) Ben Powell (Deloitte) Karen Regan (East Sussex CC) Paul Rogerson (Cumbria CC) Karen Thomas (Portsmouth City Council) David Webb (HMRC) Kelly Wilson (Gateshead MBC) |
| In attendance | Mark Jenkins (CIPFA Secretary) |

| | | Action |
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| 1 | Welcome, apologies for absence and membership issues | |
| 1.1 | Mike Revis welcomed everyone to the meeting, including James Clarke and Scott Macdonald (HMRC) who were attending for the first time. It was also confirmed that Peter Briant (HMRC) is taking over from Alan Carey, who has stepped down from the Committee. Apologies were received from Graham Coleman. | |
| 1.2 | Mike Revis reported that he had recently met with Peter Briant to discuss ways of enhancing communication between HMRC and the local authority VAT community, including making more use of the Committee to disseminate information either at meetings or via email. They will continue discussions and agree a protocol in due course. | MR/PB |

2 **Minutes of the last meeting**

- 2.1 The minutes of the meeting held on 5 July 2018 were accepted as an accurate record.

3 **Matters arising**

The Committee considered the matters arising and items carried forward from 5 July 2018:

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

Following confirmation at the last meeting that voluntary aided (VA) 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), the issue remains as to whether any retrospective action will be pursued against those bodies that have not registered appropriately with HMRC. Given the small number of bodies affected, the Committee agreed this issue should not be pursued further and that the item could be discharged from the agenda. The Committee would, however, be willing to revisit the issue if circumstances change.

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, however, this will now be explored principally through the HFMA VAT Technical Sub-Committee. It was agreed that this item should remain on the agenda to allow for updates on progress and be renamed 'Health and Social Care Integration'.

HMRC

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

David Ogilvie confirmed that guidance on children's services trusts has been approved for publication. 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**

Jo Buckmaster will provide more information by the end of the year 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)**

HMRC recently announced that the implementation of 'Phase 1' of MTD for certain customers, including local authorities, will be delayed until 1 October 2019 to allow for further testing. The Committee asked for clarification as to whether this delay applies to police/fire authorities and companies wholly owned by a local authority. David Ogilvie agreed to consult with MTD colleagues on these points, and also confirmed that the submitted briefing on those areas that operate outside the normal local authority accounting packages is also being considered. There are currently no plans, however, for 'Phase 2' to be delayed.

HMRC

3.6 **8. VAT Notice 749: Local Authorities and Similar Bodies**

David Ogilvie confirmed that updates to *VAT Notice 749: Local Authorities and Similar Bodies* have been published. Ian Harris, however, re-raised two outstanding queries:

It is stated that a local authority acting as sole managing trustee of a trust can recover VAT incurred by the trust under Section 33, provided it is incurred on the trust's non-business activities that are closely related to the local authority's functions. It has been agreed that 'acting as sole managing trustee' means the local authority corporately must so act, but outstanding issues are as follows:

1. What is meant by "the activities of the trust must be so closely related to your own functions as an authority that you cannot easily distinguish between them"? In practice, would HMRC accept anything done by a local authority acting as a sole managing trustee is almost certain to meet this criterion? If not, can HMRC provide examples of the sorts of activity it would not accept as meeting this criterion? David Ogilvie replied that in practice HMRC would generally accept that any function of a trust of which a local authority acts as sole managing trustee is likely to meet this condition, basing this on the logic that to be eligible for Section 33 VAT recovery, activities must be akin to local government functions and that these are widely defined.
2. Does the condition that the trust's activities must be non-business – and the VAT recoverable by the sole managing trustee local authority under Section 33(1) – prevent the recovery of exempt-attributable VAT under Section 33(2)? This is clearly of importance where a village hall or similar is operated as sole managing trustee with VAT-exempt lettings income; the local authority ordinarily being permitted to recover associated VAT incurred under Section 33(2) subject to being de-minimis? David Ogilvie replied that he saw no reason why Section 33 in its entirety should not apply to VAT incurred by a trust of which a local authority acts as sole managing trustee, ie exempt-attributable VAT incurred by the trust is recoverable by the authority under Section 33(2) subject to the authority remaining de-minimis.

Further debate ensued, however, that identified a number of potential complications, including the following:

- a. Is all expenditure incurred and income generated by a trust incurred/generated by the managing trustee(s), ie if the sole managing trustee is a local authority, is all expenditure incurred and income generated effectively by the authority or can the trust independently incur expenditure and generate income? This might be relevant, for example, where a bequest is left to a charitable trust but on condition it is managed by the local authority.
- b. Might the condition that the local authority corporately acts as sole managing trustee be met by the nomination of the mayor or chair of the council (or another senior councillor or a senior officer) given such officeholders act as the local authority?

Ian Harris agreed to investigate and report back to the Committee with a briefing for consideration if necessary.

IH/HMRC

- 3.7 **9. Licence to occupy v supply of services**
 Karen Regan reported that the LPLG has reviewed a revised draft of *VAT Notice 742: Land and Property*, and comments from the Committee on the issues around licence to occupy versus supply of services (including some real examples) were fed into this review process. A final draft is awaited and will be circulated when ready, although it was felt doubtful that this will resolve local authorities' queries. KR
- Under this item, the Committee also discussed a recent HMRC letter circulated to local authorities on the issue of wedding ceremony room hire. The letter insists that any income over and above the statutory costs, including the cost to hire a room for the ceremony, must have VAT applied at the standard rate. The Committee agreed to draft a response to HMRC as soon as possible explaining that this is not the position as agreed under current legislation. HMRC confirmed that local authorities in receipt of the original letter need not take any further action until agreement is reached between HMRC and the Committee Cttee/HMRC
- 3.8 **12. Children's services trusts**
 As indicated under item 3.3, guidance on children's services trusts has been approved for publication; it was therefore agreed that this item should be discharged from the agenda. MJ
- 3.9 **10.2 Electric vehicles**
 Mark Jenkins confirmed that the HMRC questionnaire has been circulated to local authorities through various CIPFA channels, with a deadline of 31 December 2018 for responses. David Ogilvie reported that responses had started to come in, and HMRC will report on further developments at the next meeting. HMRC
- 3.10 **6. On-street markets**
 HMRC again confirmed that guidance will be updated in due course to reflect the position that on-street markets are generally run under street-trading powers. The Committee agreed that this item should now be discharged from the agenda. MJ
- 3.11 **10.1 Elections**
 David Webb confirmed that VATGPB guidance is being reviewed in the light of the Committee's earlier comments, which relate to elections in the following areas:
- combined authority mayoral elections
 - police and crime commissioners
 - joint local/parliamentary elections.
- David Webb hopes to provide further clarification shortly. HMRC
- 3.12 **6. Partial exemption calculations**
 At the last meeting, Mike Revis raised the issue of a district council in the North West that had been challenged by HMRC as to whether its partial exemption methodology was acceptable, in particular, the method of exempt income divided by total expenditure in a specific area was questioned. It was also noted that this method is effectively applied (under custom and practice) by councils using the simplified 1% calculation for schools, whereby VAT on expenditure can be aggregated for all schools and 1% of the VAT thereon included in the partial exemption calculation, on the grounds that

exempt income in schools is generally less than 1% of their total expenditure.

Peter Gladdish recalled that the 1% calculation was discussed and agreed with HMRC at a Local Authority National VAT Consultative Group meeting a number of years ago, and agreed to forward onto HMRC the relevant minutes confirming this arrangement. Peter Briant at HMRC will lead on resolving this issue.

PG/HMRC

4 **Joint VAT Consultative Committee (JVCC)**

The minutes of the JVCC meeting held in April 2018 were noted.

5 **VAT briefs**

The Committee noted the HMRC VAT briefs issued since the last meeting.

6 **Land and Property Liaison Group meeting September 2018: update**

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

- a) It was agreed that going forward the British Property Federation will prepare and circulate approved minutes within two months; the minutes will also be published on the JVCC website.
- b) With respect to HMRC's requirements regarding the signatory of the Option to Tax form, it has been agreed that a list of approved signatories will be included in an annex to Notice 742.

Ian Harris understood that HMRC had replied via the LPLG to queries put to them by the British Property Federation in the context of the 'Iberdrola' decision and its potential impact on Section 106 agreement and Community Infrastructure Levy (CIL) arrangements. Ian understood HMRC's reply to be that they stand by the guidance in paragraph 8.4 of Notice 749 and that VAT is recoverable by a developer required to provide a community asset under a Section 106 agreement without creating any output tax liability. Ian observed, however, that this leaves an inconsistency as, in the analogous situation under CIL, paragraph 8.3 states that, although VAT incurred remains fully recoverable, there may be an output tax liability under the 'business gift rules'.

It was felt perhaps this difference is justified by the fact that Section 106 can specify the provision of a community asset, while CIL is always a monetary levy even if paid by providing such an asset.

7 **EU Exit**

HMRC informed the Committee that the government has recently updated guidance on a no-deal scenario; further information is available at:

<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

8 **Local authority VAT liability index**

The Committee agreed to review the VAT Liability Index and highlight priority areas for HMRC to update. In the first instance, Committee members should send their comments to Mark Jenkins by the end of December 2018, who will then collate into one document and forward to James Clarke at HMRC.

Cttee/HMRC

9 **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 apologised for the ongoing technical problems with the discussion forums, which are due to be relaunched in early 2019 with full functionality (including e-alerts and the Section 33 Network) restored.

10 **Any other business**

10.1 **Joining a VAT group**

Ian Harris reported that the October Budget included changes which will allow a non-corporate body (eg a partnership or LLP) or an individual to be a member of a VAT group. The measure will take effect after Royal Assent to the Finance Act 2019 by means of a statutory instrument. This had led Ian Harris to revisit the question of why a local authority cannot, in practice, join a VAT group, with HMRC's guidance stating that such a group would lose the benefit of the local authority's 5% de-minimis. Given VAT grouping rules permit group members to retain specific VAT treatment applicable to them despite being grouped, Ian could see no reason for this restriction. Ian would pursue this separately with David Ogilvie.

IH/HMRC

10.2 **VAT treatment of vouchers**

Ian Harris reported another measure in the October Budget, specifically that the government will implement an EU Directive on the VAT treatment of vouchers in time for the required date of 1 January 2019. This will simplify the rules for the tax treatment of vouchers, especially where they can be used either in the UK or more widely in the EU. This will prevent either non-taxation or double taxation of goods or services which relate to vouchers.

11 **Date of next meeting**

The meetings for 2019 are scheduled as follows:

- 6 March (note this is Wednesday)
- 4 July
- 7 November