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## Memo

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**Subject** Provision of Car Parking in Natural Sites

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**To** CIPFA

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**From** Ian Moules

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**Copy** David Ogilvie, Indirect Tax Directorate  
Marie Campbell, Indirect Tax Directorate  
James Clarke, PBG

The Public Bodies Team has received several requests to look at the VAT treatment of the provision of car parking in a range of rural / semi-rural locations. Rather than provide a response for each enquiry we thought it would be better to set out the principles we apply when considering the liability of car parking.

As a starting point, it is worth reiterating that the provision of off-street car parking is a standard-rated VAT supply unless no charge is made for the use of the car park, in which case it is a non-business activity and outside the scope of VAT.

The exception to this rule is where a person falls within the scope of s41A of the VAT Act 1994. Under this provision where public bodies supply goods or services pursuant to public statute which is unique to them, they are not regarded as doing so in the course or furtherance of a business carried on by them unless:

- the exemption would cause distortion of competition; or,
- the supplies arise from activities described in Annex 1 of the Principal VAT Directive which are engaged in to a degree which is more than merely negligible.

Therefore in deciding whether a supply of off-street car parking is covered by section 41A we need to ask three questions. These are discussed below.

### **Is the supplier of the car parking a public body?**

For a person to be a 'public body' it must be "part of the public administration" or to put it another way 'it must be identified as part of the public administration of the state.' HMRC is satisfied that local authorities are part of the public administration. If the provider of the car parking is not part of the public administration then they are not a public body, even if they fulfil a statutory role.

### **Is the supplier performing a statutory role?**

The key test in answering this question is if the public body provides car parking, whether under an obligation or otherwise, the legal regime underpinning this must be different from the legal regime underpinning private sector operators. HMRC has not seen any such legislation. They do not have to provide parking facilities, and even if they choose to do so they can do as they wish. In HMRC's opinion this is insufficient for the provision of car parking to be considered part of a Special Legal Regime and thereby within the scope of section 41A.

We are willing to reconsider this point if the relevant body can provide secondary or tertiary legislation that specifies how the public body must provide the car parking. To date we have not seen any such legislation.

### **Is there competition?**

The court case of the Isle of Wight was clear that we need to consider the provision of off-street car parking on a nationwide basis. While HMRC appreciates that the provision of parking in these circumstances might be different, we 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 is no alternative providers of car parking within reasonable travel distance, for example walking, cycling and park-and-ride schemes.

### **Conclusion**

Considering the above three tests, on its present understanding HMRC considers it unlikely there will be any provision of paid off-street parking that falls within section 41A and can therefore be treated as "non-business" for VAT purposes. If a person thinks there is such a case we would require sight of the relevant legislation that demonstrates it would be provided under a Special Legal Regime and representations, with supporting evidence, why the particular off-street parking should fall outside the principles established in the Isle of Wight judgment.

**Ian Moules**