

**CIPFA VAT Committee  
Notification of Technical Query to HMRC**

Subject	<b>Eligibility of local authorities to join a VAT-group</b>
Author(s)	<b>Ian Harris (Leicester City Council)</b>

<b>Type of authority affected</b>
All local authorities - also all wholly owned local authority companies ('LATCs') and similar wholly owned entities
<b>Description of the issue</b>
<ul style="list-style-type: none"> <li>• Who is involved, ie supplier, recipient or third party</li> <li>• What is being supplied, ie the type of goods or services</li> <li>• Why the supply is taking place and why each party is involved</li> <li>• When the supply is due to take place</li> <li>• Where the supply is due to take place</li> </ul>
<p>VATGPB4930 permits local authorities to join a VAT group where the common ownership rules are met but states Section 33 treatment will remain limited to just the local authority and the VAT group as a whole, including the local authority, will lose the benefit of the local authority's partial exemption 5% de-minimis.</p> <p>While restriction of the benefit of Section 33 to just the local authority is consistent with anti-avoidance rules in Section 43(1AA) - under which specific VAT treatment dependent on a VAT group member's individual status is retained notwithstanding their membership of the group - it is submitted this does not justify denying the whole VAT group, including the local authority, from benefitting from Section 33(2).</p> <p>It is submitted, if it is permissible to isolate VAT incurred by a local authority within a VAT group and continue to allow VAT recovery under Section 33(1), it should be equally permissible to isolate exempt-attributable VAT incurred by the local authority and so permit recovery under Section 33(2), subject to the local authority remaining de-minimis.</p> <p>Applying Section 43(1AA) this would not, however, extend Section 33 treatment to non-local authority members of the VAT group</p>
<b>Impact and extent of the issue</b>
<p>Where, for example, a local authority and its wholly owned trading company ('LATC') were VAT grouped, the consequence of Section 43(1AA) would be that effectively there would remain two taxpayers subject to their own VAT rules (though with a consolidated VAT Return). However, mutual supplies between the local authority and the LATC would fall outside the scope of VAT, which could be advantageous.</p> <p>Where the LATC makes VAT-exempt supplies, eg a property holding or investment company, or a company supplying welfare care, supplies of staffing and back-office administration and management services thereto by its parent local authority result in an irrecoverable VAT cost for the LATC</p>

<p>absent it being grouped with the local authority.</p> <p>Conversely, VAT-grouping the LATC with its parent local authority would ease any partial exemption pressure on the latter where the LATC occupies premises leased from the local authority.</p>	
<b>Government department sponsoring the initiative, if any</b>	
Not applicable	
<b>Funding</b>	
Cover what payments are involved, who the funds belong to and who is making and receiving payment. Also explain how the funds are viewed, ie grant, donation, gift or consideration etc	
Not applicable	
<b>Legal powers used or relied upon</b>	
VAT Act 1994, Sections 33 and 43	
<b>Current VAT treatment</b>	
<p>VATGPB4930 states local authorities may join a VAT group where the common ownership rules are met but that Section 33 treatment then remains limited to just the local authority and the VAT group as a whole, including the local authority, loses the benefit of the local authority's partial exemption 5% de-minimis.</p>	
<b>References in HMRC publications, including websites if any</b>	
VATGPB4930	
<b>Tax analysis</b>	
Include reason for change and alternative liability proposed	
<p>It is submitted that Section 43(1AA) - under which any specific VAT treatment dependent on a VAT group member's individual status is retained notwithstanding their membership of the group - is sufficient to support a local authority member of a VAT group retaining the full benefits of Section 33, including the ability to recover exempt-attributable VAT under Section 33(2) subject to being de-minimis.</p> <p>Applying Section 43(1AA) other members of the VAT group would be subject to 'normal' rules whereas the local authority would retain Section 33 treatment as provided for thereby.</p>	
<b>References in tax legislation supporting change</b>	
Section 43(1AA)	
<b>Other supporting evidence</b>	
None	

Date	January 2019
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