

# minutes

Committee	CIPFA Value Added Tax Committee
Date	5 November 2015
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) Alan Carey (HMRC) Graham Coleman (Colchester BC) Tim Cooper (Deloitte) Peter Gladdish (PSTAX) Stephen Gucciardi (Deloitte) Ian Harris (Leicester City Council) Laurence James (HMRC) Simon Mulliner (Lancashire CC) David Ogilvie (HMRC) James Ormanczyk (HMRC) Nina Philippidis (Cheltenham BC) Karen Regan (East Sussex CC) Paul Rogerson (Cumbria CC) Jo Turner (HMRC) Tim Wallis (Bristol City Council) Tessa Williams (Neath Port Talbot Council)
In attendance	Maria Menezes (CIPFA, Secretary)

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	Action
<b>1 Apologies for absence</b>	
1.1	Apologies were received from Gwyneth Grahame and Jim Johnson. This was Mike Revis's first meeting as chair as Colin Scates had stood down at the last meeting.
<b>2 Minutes of the last meeting</b>	
2.1	The minutes of the meeting held on 2 July 2015 were accepted as an accurate record.
<b>3 Matters arising</b>	
	The meeting considered the matters arising and items carried forward from 2 July 2015:

3.1 **3.1 IOW case**

The hearing before the Court of Appeal has been listed for 2–3 December 2015.

3.2 **3.2 Property search charges**

David Ogilvie had written to the Committee on 27 October outlining the legal opinion he had received in response to Tim Wallis's letter on behalf of the Committee dated 5 February. HMRC's view is that when a local authority provides refined data (CON 29(R) and CON 29(O)) in answer to enquiries made of it, the authority enters into a contractual relationship with the enquirer in the same way that a commercial property search company does. Regulation 8(1) of the Local Authority (England) (Charges for Property Searches) Regulations 2008 permits a charge to be made for the service and this charge is at the discretion of the authority (Regulation 8(2)). In these circumstances HMRC does not consider that a local authority engages as a public authority in relation to this activity and thus Section 41A of the Value Added Tax Act 1994 does not apply. Therefore the provision of refined data is subject to VAT at the standard rate. David confirmed that unless the Committee makes representations responding to the points in his letter, local authorities will have to start charging VAT.

Tim Wallis asked for further clarification around Regulation 8 and why it is not considered that this creates a special legal regime. David explained that the lawyers maintain that this is about charging, not about compiling the information, and the charging regime is not a special legal regime. Tim argued that local authorities are restricted by what they can charge whereas private search companies are not. David confirmed HMRC's view is that local authorities have to hold the information, but how and whether local authorities provide this information is a discretionary activity.

David said that if the content of the letter stands, a date will be agreed from which VAT must be charged. Mike Revis confirmed that the Committee will consult with local authorities and put something together which can be discussed at the National Group meeting in January enabling any further representations to be submitted to HMRC by the end of January 2016. Laurence James advised that in light of the policy view and CIPFA's concerns regarding implementation, HMRC would seek implementation from 1 February 2016. However, this would be subject to a formal response from CIPFA detailing their concerns on implementation.

MR/TW

3.3 **3.3 Section 33 capping provisions**

Jo Turner confirmed that HMRC is looking for further resource to take this forward. As this will be a change in policy, it needs ministerial approval. Laurence agreed to provide resources to policy to take this work forward. Jo confirmed she will respond to the Committee before the next meeting in March.

HMRC

3.4 **3.4 Local authority cemeteries and crematoria – memorials**

David Ogilvie explained that Finance Bill 2015 enacted a 'tax lock' which means that for any changes HMRC make that may be perceived as an increase in VAT, they have to obtain ministerial clearance. The Revenue and Customs Brief confirming the changes for local authority cemeteries and crematoria has therefore been delayed while clearance is obtained. David Ogilvie confirmed that local authorities can rely on what was agreed by the Committee and recorded in the minutes. He thought most local authorities had already implemented the changes and suggested it was better for authorities to move to a position of implementation if they had not yet done

so. Jo confirmed that the Revenue and Customs brief has been drafted and is ready to be issued once clearance has been given.

HMRC

3.5 **3.5 Park and ride**

David Ogilvie had responded to the Committee via email. He noted that the first point in the paper submitted by the Committee made the argument that the fees charged for park and ride should not be viewed as consideration for supplies within the scope of VAT because of the existence of subsidies. As this was the argument being put forward in some of the leisure centre cases and the case of Wakefield College, and the case before the CJEU of Gemeente Borsele (case C-520/14) may also be relevant, he considered it appropriate to await the outcome of the judgments in these cases on the general point of subsidised prices, as they may offer guidance on the issue.

David confirmed that while this is under review, local authorities can continue to apportion. The second point in the paper submitted by the Committee was that park and ride schemes were operated under a special legal regime. David said he could find no evidence in the Road Traffic Regulation Act 1984, DCLG's National Planning Policy Framework or in the House of Commons research paper 98/16 to suggest this was the case.

HMRC

3.6 **3.6 Theatre hire and supplies of facilities**

The Committee had accepted the position on theatre hire, the outstanding issue was the drawing of a line in the sand, though this is complicated by some authorities receiving assessments. Karen Regan had raised this at the Land and Property Liaison Group meeting. The Committee reasserted that as the previous guidance was not clear, it had been misunderstood and different treatments have arisen due to different interpretations by local officers. James Ormanczyk responded saying he thought Notice 742 is quite clear. Ian Harris suggested that while Notice 742 is clear, the question of at what point a license to occupy becomes something else is not so easy to interpret and the guidance might benefit from some examples of where HMRC believes the line falls. James confirmed that HMRC is looking to overhaul Notice 742 so examples can be included. He added that you have to look at whether your situation meets the conditions set out by the ECJ, particularly whether it is a passive supply of land or active use of facilities, though traditionally UK land law has not sat well within European legislation. James agreed to circulate the draft version of Notice 742 for comment when it is available. The following was agreed:

1. Where local authorities have not charged VAT, relying on a previous decision given to them by an HMRC officer, the correct liability should be implemented with effect from the next accounting period.
2. Where local authorities have not charged VAT, and they have not relied on a decision given to them by an HMRC officer, the correct VAT treatment should always have been applied.
3. CIPFA members may contact HMRC if they believe that they have received incorrect advice from HMRC. HMRC will consider each case on its merits.
4. Where HMRC has raised assessments under scenario 1, they will be withdrawn.

HMRC

3.7 **3.8 Voluntary aided schools and de minimis**

Sarah Bagley had submitted a briefing with an accompanying flowchart which aimed to tackle the confusion around de minimis and capital

expenditure limits. She said problems particularly arise when voluntary aided schools spend delegated budget on capital. Laurence James said he was grateful for the paper. One of the tax specialists is looking at the paper and their initial view is that what the paper proposes is a good way forward. Laurence said there would be a response before Christmas.

HMRC

3.8 **3.9 Voluntary Aided Schools VAT Guidance**

Jo Turner advised she needs to get some information from the DfE. Laurence James agreed to provide some resources to policy so that the guidance can be updated. Jo advised she will arrange a meeting at the end of November to take this forward and will contact Tim Wallis if any additional information is required. She hoped to be able to wrap this up before Christmas.

HMRC

3.9 **3.10 HM Courts and Tribunals Service website and receivership fees**

Jo Turner said the Ministry of Justice thinks the relevant document has been updated, but it needs checking to see that the required VAT points have been correctly incorporated. David Ogilvie said he would do this. It was agreed to drop this item from the agenda.

HMRC

3.10 **3.11 Communication with HMRC**

Mike Revis had said he would take any concerns from the National Group to the Committee, but had not received many specific issues; however the option to tax has been taking too long. James Ormanczyk confirmed that HMRC had taken steps to resolve the delay, so customers should be starting to see an improvement. There was a question around the duly authorised officer signing this off and whether this needs to be introduced into the form. Mike asked that if colleagues wanted to raise this, could they please speak to him first and he can pick this up with James. Mike also noted that he can never get the option to tax form (VAT 1641A) to open. James noted that it is the conditions of the option to tax that need to be met, so whether this is conveyed via a letter or the form, it doesn't matter.

HMRC confirmed they would expect to respond to a notification of an error in 30 days.

Laurence James confirmed that he was advancing the use of a single email address box for local authorities to contact HMRC. This mailbox would always be monitored which will ensure that emails do not get lost and they can be delegated quickly to the correct person. This email address should be used by all local authorities unless they are contacting the CRM directly.

3.11 **10.1 Disabled Facilities Grant**

Ian Harris had little to update the Committee on. He had spoken with relevant parties in the case, but there appears to have been little progress. This item was dropped from the agenda pending future developments.

3.12 **10.3 Kingscrest**

Laurence James had provided guidance for VAT practitioners to assist them in handling Kingscrest claims. Ian Harris said the Central Counties VAT Group had put together a paper on Kingscrest. Laurence said he was happy to take a look at it.

IH/HMRC

4 **Joint VAT Consultative Committee**

The minutes of the meeting held on 6 August 2015 were noted. Sarah Bagley gave a further overview of some of the discussions. It was noted that the EU-wide VAT return was being dropped off the agenda and that the

problem with having a de minimis limit for the Mini One Stop Shop was that some member states do not have a registration threshold.

## 5 **VAT briefs**

The Revenue and Customs briefs issued since the last meeting were noted. Among them included Revenue and Customs Brief 17/15: Deduction of VAT on Pensions Fund Management Costs. Simon Mulliner noted that there will be implications for LGPS pension funds if they are merged together and fall outside of Section 33 as announced last month. With an estimated £200bn of assets between the funds, the VAT cost on the fund managers fees could be substantial unless the funds can structure in such a way as to allow exemption for the fees (eg authorised contractual schemes) or if the new deduction rules can be made to work in this context.

## 6 **VAT Government and Public Bodies Guidance**

Jo Turner explained that the outstanding items that need to be updated have been delayed because of the move of all HMRC content to GOV.UK. The updates are all drafted and ready to go, but cannot be actioned until the guidance is live on GOV.UK.

Peter Gladdish noted that Notice 749 was full of errors and in its current state, it would be better to withdraw it rather than offer out of date information. HMRC colleagues thanked Peter for his feedback.

## 7 **Better Care Fund**

Mike Revis had written to HMRC on 8 September outlining how local authorities think the Better Care Fund operates, it was thought this was important given the sums of money involved. He drew particular attention to 5b in the letter, the scenario where the local authority 'host partner' acts as the agent of the CCG and the practical implications which arise, ie it would be impractical for local authorities to declare output VAT in the same VAT accounting period as the VAT incurred on the relevant costs is recovered.

Laurence James said he would be looking at the paper with Jo Turner and other colleagues. They have a preliminary view and agreed to have a response by the year end. Ian Harris said he had some further questions, it was agreed that he could submit them to HMRC via Maria Menezes.

**HMRC/IH**

## 8 **Local Authority VAT Liability Index**

Simon Mulliner had picked up on some entries that needed updating. Dropped kerbs should be non-business and overpayments at car parks as a result of the Kings Lynn case should be outside the scope. Cycle training is down as standard-rated, however Simon thought this ought to be exempt. Jo Turner will review the above and will then ask the Public Bodies Unit of Expertise to send the updates to the VAT Liability Index to Maria Menezes.

**HMRC**

## 9 **TI Sonline VAT information stream, discussion forum and S33 VAT network**

The section on the Better Care Fund had been updated to make it clearer to people about how they should apply the guidance. Simon Mulliner is working with Mark Dyer to provide a couple of examples. Ian Harris mentioned that

he had suggested changes to the section on course fees to Mark Dyer. Maria confirmed this was on the list for updating.

**MD**

**10 Any other business**

10.1 Mike Revis had raised VAT efficient welfare services with HMRC and whether they are generally acceptable (noting individual rulings to that effect). David Ogilvie said he was seeking advice and would respond in due course.

**HMRC**

10.2 Ian Harris was seeking clarification that if a local authority collects trade waste from a neighbouring authority, then it is business rather than non-business as it is acting outside its local authority boundary. It was confirmed that this is indeed the case.

10.3 Ian Harris asked if a local authority fits solar panels to a tenanted property, eg an academy, and the tenant receives free electricity as a result, is VAT due given electricity is seen as a supply of goods not services. David confirmed the answer is yes and noted there may also be a barter arrangement in place. David Ogilvie directed the Committee to the following guidance: VATSC05222-228.

10.4 Ian Harris noted that the unresolved point on annexes and the Colchester decision was ongoing before the Land and Property Liaison Group. A draft Revenue and Customs Brief had been delayed in the light of representations received.

**11 Date of next meeting**

11.1 The next meetings will be on Thursday 3 March and Thursday 30 June 2016.