

**Indirect Tax Directorate**

Ian M Harris BA (Hons) FIIT CTA MAAT  
Principal Accountant (Financial Strategy: Tax  
Specialist)  
VAT & Taxation Advice Office  
By email

VAT Supply  
3rd Floor,  
100 Parliament Street  
London SW1A 2BQ

**Tel** 03000 585990

**Fax** 020 7147 0097

**Email** David.Ogilvie@hmrc.gsi.gov.uk

**Internet** [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

**Date** 6 April 2018.

**Our ref**  
**Your ref**

Dear Ian

**RE: Markets – liability of on-street market pitches**

Thank you for your letter today.

To recap, we were asked why TIS online guidance refers to the letting of market pitches – on street - as non-business, and the letting of market pitches – off street - as business. The enquirer asked what the distinction between the two is given the decision in *Tameside MBC* ([1979] VATTR 93). The purpose of the briefing paper that Marie Campbell sent to the VAT Committee was to assist in answering that question.

You have helpfully explained the difference between street trading, where it is necessary to obtain a licence from the local authority (unless certain exemptions from licensing apply), and the occupation of a pitch at a market. One definition of street trading is “exposing or offering articles for sale on roads, pavements and other areas to which the public have unrestricted access without payment”. Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 excludes from the definition of street trading “anything done in a market or fair”. In London the issue of street trading licences is governed by Part III of the London Local Authorities Act 1990, which has the same exclusion.

I searched the Croydon Council website, merely because I live in the Borough and know it well. There the licence fees are calculated per square metre of designated space. Street trading without a licence is an offence, other than where such a licence is not required. By contrast, Croydon Council separately offers the opportunity for people to rent a pitch for £10 per day at its Surrey Street open air market, and this appears to be different from a street trading licence. The Council’s website states that there are currently no vacant sites in the Borough for street trading.

HMRC’s guidance in VATGPB8770 does not refer to the issue of licences for street trading, but it does refer to the issue of market licences by local authorities, which is outside the scope of VAT.

I wonder whether the distinction in the TIS online guidance between on-street and off-street market pitches is wholly accurate. The distinction appears to me to be between street trading licences and market pitches. Do you think this is correct?

For completeness, I believe the concept of "*marche ouvert*" has been discontinued and section 22(1) of the Sale of Goods Act 1979 repealed. It related to the sale of stolen goods in designated markets between sunrise and sunset, accepting that the purchaser had good title to the goods if the purchase was made in good faith. I assume it dealt with things like antiques and paintings. Additionally, it was unclear to me how the definition of a market in 'Pease and Chitty's Laws of Markets and Fairs' affects the treatment of market rents (or tolls) for VAT purposes.

Thank you again for your helpful letter.

Kind regards.

Yours sincerely

David Ogilvie

Cc Mark Jenkins

Senior Editor

CIPFA