



Indirect Tax Directorate
VAT Supply Team
Area 3/09
100 Parliament Street
London
SW1A 2BQ

Date 14 February 2018
Our Ref
Your Ref

Tel 03000 653383

Memo

Subject Country Parks: the VAT Treatment of Car Park Income

To Mike Revis/Mark Jenkins

From Marie Campbell

Copy David Ogilvie

Introduction

Following the correspondence between the CIPFA VAT committee and Ian Moules I write in response to the letter and enclosures dated 28 April 2017.

Special Legal Regime – The Countryside Act.

The Countryside Act 1968 empowers local authorities to establish and care for country parks. The letter from the CIPFA VAT committee has cited section 43(2) as being a special legal regime (SLR) as it gives the vires for local authorities to make reasonable charges for facilities.

When establishing the existence of an SLR our best terms of reference are the comments of the CJEU in Case C 231/87 – [Comune di Carpaneto Piacentino and others](#)

15 An analysis of the first subparagraph of Article 4(5) in the light of the scheme of the directive shows that it is the way in which the activities are carried out that determines the scope of the treatment of public bodies as non-taxable persons. In so far as that provision makes such treatment of bodies governed by public law conditional upon their acting "as public authorities", it excludes therefrom activities engaged in by them not as bodies governed by public law but as persons subject to private law. Consequently, the only criterion making it possible to distinguish with certainty between those two categories of activity is the legal regime applicable under national law.

16 It follows that the bodies governed by public law referred to in the first subparagraph of Article 4(5) of the Sixth Directive engage in activities "as public authorities" within the meaning of that

provision when they do so under the special legal regime applicable to them . On the other hand, when they act under the same legal conditions as those that apply to private traders, they cannot be regarded as acting "as public authorities ". It is for the national court to classify the activity at issue in the light of that criterion.

Thus what is required is a SLR governing the way in which car parking is provided, and that this is different from the legal regime governing the private sector.

Section 7 of the Act provides the legal vires for the establishment of county parks but does not determine the way in which these parks should be provided. In fact as shown from the attached Annex A the provision of parks can and is done by a variety of organisations.

The Act also remains silent on the way parking should be provided in country parks. Similarly the bye-laws that we have been shown do not establish a method of performance different to anyone other body.

As such HMRC is not persuaded that the Countryside Act is a SLR for providing parking.

Generation of profits.

In the letter CIPFA notes that the local authority is unlikely to generate profit from its activities in running a country car park. The lack of a "profit" does not in itself exclude consideration from application of VAT. As the legislation does not give an assessment of what constitutes a surplus it would be permissible for the local authority to employ a third party to provide parking without breaking the law.

The lack of profit would not be a reason for parking in country parks being a SLR.

Bye-laws and comparison with other providers

I have analysed the by-laws and parking orders provided on six country parks and compared this with the terms and conditions by a commercial provider of parking. The terms given by both are fairly similar. The biggest difference would seem to be the speed at which a car is removed if it overstays. The terms and conditions listed at the parks would suggest that a car would be moved after a relatively short period whereas this commercial provider would wait for over 28 days before terming a car as abandoned. However both parties can remove or move vehicles in an emergency and if there is evidence of abandonment a commercial car parking company can dispose of a car in the same way as a local authority. Commercial providers are also able to pursue payment by legal means albeit by a civil case. The difference in ensuring compliance is not enough demonstrate that the local authority is working under a special legal regime.

Other activities in a country park

The Countryside Act 1968 allows local authorities to provide facilities for the enjoyment of the countryside by the public. However this legislation allows the construction of any building for any purpose. As you can see from the enclosed Annex B a number of parks have a variety of amenities. Some are used as wedding venues and most have a catering establishment. To give parking special consideration under this legislation would invite the same treatment for the hiring of boats, filming permits, sale of food and in one case action activity days.

Summary

As such HMRC believe that

- A local authority is not acting under a special legal regime when it charges for off-street parking for accessing a country park.
- To treat the parking as non-business would mean other activities in the park would also be subject to non-business treatment.
- These activities would then need to be tested for distortion of competition.

Parking Orders/ All parking is a SLR under the Traffic Management Act 2004

As you explain parking orders can be introduced under the Road Traffic Regulations Act 1984 however these do not indicate that the supply of a car parking space should be given in any particular way they just allow local authorities to take action against those contravening the rules.

CIPFA have also noted that the obligation for the local authority to manage traffic could be an indication of a SLR. CIPFA have indicated that country parks are exclusively provided by public bodies so action taken to stop congestion would be a SLR.

A number of historic gardens/ places are now being run by trusts on which the local authority may be represented but is not in control. Other spaces similar to country parks may be run by private companies¹.

In addition HMRC must look at the obligations placed on the commercial sector. A business wishing to open a theme park, shopping centre or build a new accommodation could only do so with planning permission. The council would oblige the operator to provide a certain number of parking spaces and the operator may take financial responsibility for roundabouts or access roads to the site. Permission may be denied if the council believes that provision will be inadequate or cause congestion. The provision of off-street parking in these conditions would still be considered part of the business and any charges made would follow the normal VAT liability.

Is there competition?

CIPFA notes that there are no examples of private operators providing car parks in country parks. However the attached Annex A suggests otherwise.

HMRC maintains the opinion given in February 2017 that it is unlikely that the provisions of paid off-street parking falls within section 41A and can therefore be treated as non-business for VAT purposes.

Annexes

- A – Country parks not managed by a local authority
- B – Activities in country parks
- C – Areas covered by national parks

¹ Alexander Palace, Avenue House Finchley, Severn Trent Water runs Draycote Water in Warwickshire.