

SUBJECT: Planning Performance Agreements

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TYPE OF BODY AFFECTED: Local Authorities (Planning Authorities)

DESCRIPTION OF THE ISSUE: A Planning Performance Agreement (PPA) is something which the Government allows planning authorities to use and allows them to charge a reasonable amount to cover any additional costs over and above the usual statutory planning application fee. It does not commit the local planning authority to a particular outcome; it is instead a commitment to a process and timetable for determining an application. A planning performance agreement is agreed voluntarily between the applicant and the local planning authority prior to the application being submitted. Councils are able to cover their costs for resources set aside to formalise the process for these large complex planning cases.

IMPACT AND EXTENT OF ISSUE: There appears to be inconsistent treatment between local authorities relating to the VAT treatment of these charges and we would like to seek clarification of the correct treatment.

CURRENT VAT TREATMENT: Some local authorities are charging VAT whilst some are treating the income as non business.

REFERENCES IN HMRC PUBLICATIONS (INCLUDING WEBSITES IF ANY):

<https://www.gov.uk/guidance/before-submitting-an-application#planning-performance-agreements>

TAX ANALYSIS: PPAs are voluntary, but they only happen in support of, or in preparation for a formal planning application, just one that is going to require significant LA resources to process. Although it is not a statutory fee, we would see it as a further payment relating to the planning application process and we believe it is something that only the council can do. The PPA is established to recognise the increase in resource and the expectation/need of expedience by the developer. Although it is not a statutorily required process in its own right, we do not see it as a supply capable of standing alone, as it will only ever be linked to the formal planning application process, there is no separate benefit received by the planning applicant beyond the processing of the formal planning application. So, on that basis we would argue that they are part of a single non business process.

‘The existence of a planning performance agreement means that the statutory time limits for determining the application no longer apply (to the extent that the agreement specifies a longer period for the decision, in which case the agreement will count in the same way as an agreed extension of time). If an authority fails to determine the application by the agreed date, then the applicant may appeal. Likewise, if an applicant does not abide by the agreement, the local planning authority may not be able to follow the agreed process.’ – *taken from above HMRC link.*

This is very different to pre planning advice, which as agreed by CIPFA some years ago – is a standard rated supply that is available from anywhere and is separate to the planning application. Pre-planning advice is seen as taxable not just because it is voluntary, but because it falls wholly outside of the statutory planning process, does not influence the result of any formal process that might follow and crucially there may not be any further application; so it is just payment for a relatively informed opinion which can be sought from anywhere.

REFERENCES IN TAX LEGISLATION SUPPORTING CHANGE: Nothing directly refers to the VAT treatment of Planning Performance Agreements.

OTHER SUPPORTING EVIDENCE:

Extracts taken from guidance notes issued by the DCLG (as attached)

Objective

The proposal for the introduction of Planning Performance Agreements (PPAs) is intended to provide local authorities with a mechanism to improve the management of large-scale major planning applications.'

'A PPA is an agreement between a local planning authority and an applicant to provide a project management framework for handling a major planning application. This framework should improve and speed up the planning process by committing both parties to an agreed timetable containing 'milestones' that make clear what level of resources and community engagement are required, and ensure that all relevant aspects such as sustainability assessments and design standards are properly considered.'

A PPA is made pursuant to Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 93 of the Local Government Act 2003.

Date 7 December 2018