

minutes

Committee	CIPFA Value Added Tax Committee
Date	6 March 2019
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) Jo Buckmaster (Warwickshire CC) James Clarke (HMRC) Josh Eyre (Deloitte) Peter Gladdish (PSTAX) Gwyneth Grahame (Caerphilly Council) Stephen Gucciardi (Deloitte) Ian Harris (Leicester City Council) Sadik Karim (HMRC) Simon Mulliner (Lancashire CC) David Ogilvie (HMRC) Christopher Palmer (HMRC) Karen Regan (East Sussex CC) Paul Rogerson (Cumbria CC) Karen Thomas (Portsmouth City Council) Kelly Wilson (Gateshead MBC)
In attendance	Jonathan Last (CIPFA Secretary)

Action

- 1 **Welcome, apologies for absence and membership issues**
- 1.1 Mike Revis welcomed everyone to the meeting, including Sadik Karim and Christopher Palmer (both HMRC) who were attending for the first time. Apologies were received from Graham Coleman (Colchester Borough Council), Peter Briant and David Webb (both HMRC) and Jen Thompson (Deloitte), for whom Josh Eyre came in her place.
- 2 **Minutes of the last meeting**
- 2.1 The minutes of the meeting held on 1 November 2018 were accepted as an accurate record.

3 **Matters arising**

The Committee considered the matters arising and items carried forward from 1 November 2018:

3.1 **Health and social care integration**

David Ogilvie is in the process of arranging to see NHS England to find out what is coming on-stream and how they are going to address the VAT issues. David won't be able to meet them until after the meaningful vote on EU Exit – likely to be the end of March.

HMRC

3.2 **Car parking charges in country parks**

Jo Buckmaster had submitted a paper to David Ogilvie. David said that HMRC are struggling to find byelaws that identify parking specifically in relation to how cars are parked. But the absent David Webb (also HMRC) is due to come back with more. David O. said that an enforcement decision on how people park may not be enough, and HMRC may need to look at the issue against case law, in particular from the Isle of Wight. That being so Ian reminded HMRC of the 'Edinburgh Telford College' decision – what matters for a special legal regime is the existence of an overarching special legal environment.

HMRC

3.3 **Making Tax Digital (MTD)**

Mike clarified for those present that Phase 1 has been delayed until October 2019, with Phase 2 to October 2020. The committee confirmed that they have received letters confirming this delay.

Where a local authority submits the VAT return for other bodies, such as a combined fire and rescue authority, wholly owned company, academy or other local authority, a key issue appears to be the need for an agency agreement. All VAT officers that file returns on behalf of such other organisations should register with HMRC as agents under an Agency Service Agreement (ASA). None of the committee members had managed to register successfully yet. Mike suggested that members of the committee direct their issues to Grant Hitchman at Sandwell who is the local authority representative on the JVCC MTD sub-committee – as well as clarifying if they do, in fact, definitively need to register as agents

Mike expressed the view – echoed by the committee – that the response from Anna Thomas of HMRC to the committee's letter was a little disappointing. Of particular note was the absence of exemptions for schools. However, Karen Regan said that it seems from Anna's letter that it would be acceptable to receive data from schools in Excel format via email, and the committee broadly agreed that this seems OK.

It was agreed that Kelly Wilson will seek the views of the National VAT Group as to whether this resolves the issues on schools. Kelly will feed back by the end of March 2019.

Paul Rogerson told of how his organisation uploads through a portal, which a representative from MTD told them is OK. Paul will update the committee if he learns anything more about this.

Mike will reply to Anna and say that they will come back to her after they have this National Tax group feedback. He is not planning to meet with Anna to discuss journal entries – these possibly could instead be summarised on a spreadsheet.

Ian spoke about the £85,000 threshold for compulsory compliance with MTD, and whether this applies to town and parish councils. It was agreed the legislation seems clear that the £85,000 threshold is separate to the VAT-registration threshold (effectively £1 for town and parish councils) but HMRC were invited to confirm this.

PR/KW/MR

3.4 VAT Notice 749: Local Authorities and Similar Bodies

Some salient points remain on which better guidance is desirable, which Mike agreed to forward to David Ogilvie; these are:

- VAT recovery on staff and volunteers' expenses
- VAT recovery on election expenses (covered in 3.7)
- VAT treatment of the transfer of assets between statutory bodies
- VAT treatment of the transfer of assets to the community
- VAT treatment of entertainment, etc expenses incurred by local authority chairs, mayors, etc
- VAT treatment of youth clubs and youth centres.

MR

3.5 License to occupy v supply of service

Notice 742, which should clarify this matter, has still not been finalised. James Clarke asked Karen Thomas to email some of her examples to him and David Ogilvie and they will bring these to the attention of the HMRC policy team, stressing that it needs to be resolved. Ian drew attention to the 'Mesquita' CJEU decision on occupation as owner (this need not be all the rights of an owner).

KT/HMRC

3.6 Electric vehicles

David Ogilvie has been acting as a conduit for this issue. The closing date has now passed, so the committee agreed that this can be dropped from the agenda.

3.7 Elections

David Webb (absent today) is going through a final fact-finding exercise, in an attempt to simplify the issue. He will pull in more information to pass on to the committee.

There was criticism from committee members of the way a request for information from HMRC in respect of VAT recovery on election expenditure had been handled. The request had been channeled through the CIPFA VAT Committee and disseminated further through the 'National Group' and various regional groups. Critics thought such requests for information should be addressed by HMRC directly to authorities.

Mike had emailed Paul Campbell at HMRC to get a feel as to what response there had been to the communication but had not received a reply.

HMRC

3.8 **Partial exemption calculations**

Peter Gladdish pointed out that there are two conflicting dates for completion of partial exemption calculations – he will write to David Ogilvie for clarification.

Simon Mulliner raised a question about whether the simplified 1% calculation for schools was acceptable, in particular, the method of exempt income divided by total expenditure. Generally local authorities have their methods agreed in writing. However, it was felt the aforementioned method could be used in appropriate areas where there is a large proportion of non-business activities.

PG

3.9 **Wedding room hire**

Five authorities gave HMRC their responses. Christopher Palmer and James Clarke of HMRC are working together to review these. Variations on room size, competition and how costs have been made are some of the issues that have stuck out from their initial observations. They may need to go back to some of the authorities for clarification on various points.

HMRC

4 **Eligibility of local authorities to join a VAT group (briefing)**

Ian Harris had submitted a Briefing on this which David Ogilvie was considering. Ian also highlighted a recent reference to the CJEU on this same issue which David noted. David said that HMRC is not sure why the current guidance says what it says and that he will be looking into it.

HMRC

5 **Funeral celebrants (briefing)**

The committee looked at a letter to HMRC on this matter from 2005 that had been retrieved by Mark Jenkins, the committee's former secretary. Karen Regan wondered about whether funeral celebrants are standard-rated or exempt under Schedule 9, Group 8. General opinion was these should be exempt as services in connection with the disposal of the remains of the dead but David Ogilvie said he will look into the matter in light of the letter and respond by the end of March.

HMRC

6 **Community council/community groups and Scottish local authorities (briefing)**

David Ogilvie clarified that HMRC makes sure that the case that goes to the Treasury contains the correct information. Ian agreed to liaise with the Scottish enquirer and provide the information David sought.

IH

7 **Local authorities as sole trustees (briefing)**

David Ogilvie responded to the committee's queries to its satisfaction. David will continue to look into Ian's question regarding improved guidance. The item can now be taken off the agenda.

HMRC

8 Joint VAT Consultative Committee (JVCC)

The minutes of the JVCC meeting held in July 2018 were noted. Sarah Bagley attended but said there was nothing of note to report.

8.1 Land and Property Liaison Group (LPLG)

Ian Harris attended this meeting and had the following to report from it:

On VA schools and eligibility to zero-rating:

HMRC is considering the impact of 'Colchester' and 'St.Brendans VI Form College', both of which addressed the question of when a new building ('Colchester' whether a new building forming part of a wider campus can be zero-rated, 'St.Brendans VI Form College' when a new building is part of an extant building subject to an OTT when linked thereto). HMRC recognises the impact on the HE/FE sector and on charities and anticipate publishing a Brief or revised guidance in due course.

On cladding:

HMRC stands by the law on zero-rating and lower-rating but accepts the need to replace cladding may be covered by 'snagging' in which case, if the original build was zero-rated or original works lower-rated, so can be the replacement cladding providing carried out by/for the same person. Otherwise replacement cladding is standard-rated.

Key is 'person constructing' status to be eligible to 'snagging' and HMRC believe only in the event of a TOGC can a new owner/occupier inherit that. HMRC agreed though to consider a statutory transfer between public bodies, eg on local government reorganisation, it being previously accepted 'person constructing' status then flows through to the successor authority. Although a local authority secures full VAT recovery on replacement cladding, if zero-rated this could reduce pressure on their partial; exemption de-minimis.

HMRC does not generally accept cladding can be lower-rated as insulating materials but will consider each case on its merits, eg a housing authority/housing association installing thermal cladding on old housing stock for thermal efficiency reasons.

9 VAT briefs

Of the three briefs issued since the last committee meetings, the committee did not need to discuss [VAT Brief 11 \(2018\): VAT - rule changes for higher education](#) and [VAT Brief 12 \(2018\): refunds of VAT in the UK for non-EU businesses](#).

The committee did discuss [VAT Brief 13 \(2018\): change to the VAT treatment of retained payments and deposits](#) which has potential implications for local authorities.

10 Amendments to tax returns – CIPFA VAT Committee response to consultation

The committee now awaits the result of the consultation. A submission was made by both the National VAT Group and CIPFA VAT Committee in response to this consultation.

- 11 **VAT government and public bodies guidance**
David Ogilvie told of a system error when updating this guidance. Off-street markets and children's services are two areas that are waiting to be updated.
- 12 **EU exit**
It was identified that Mike Cunningham makes some interesting points on this matter in the latest JVCC minutes, which the committee may wish to read.
- 13 **Local authority VAT liability index**
James Clarke reported HMRC's intention to sign off and supply updates on the committee's views on changing the VAT liability index bit by bit. They will send the comments that they have so far to Mike this week. Mike will, in turn, forward the committee's latest views to HMRC. James expects to have further feedback to give by the next committee meeting in July.
MR/HMRC
- 14 **TISonline VAT information stream, discussion forum and S33 VAT network**
Jonathan Last apologised for the ongoing technical problems with the discussion forums, but reported that they are planned to be relaunched in April 2019 with full functionality. The e-alerts for updates to TISonline information streams are already running again.
- 15 **Any other business**
- 15.1 **VAT on planning performance agreements**
Peter Gladdish believes that these are statutory. Others believe not and are treating them as standard-rated. Peter to do a briefing paper.
PG
- 15.2 **Notifying the option to tax**
Sarah Bagley has sent questions regarding delegated authority to sign options to tax to Sadik Karim at HMRC, who is now looking into it and waiting for a response from the appropriate team.
HMRC
- 15.3 **A blanket exclusions for local authorities from the construction reverse charge**
David Ogilvie advised that CIPFA should write a formal letter to HMRC about this if desired.
- 16 **Date of next meeting**
The meetings arranged so far for 2019/2020 are scheduled as follows:
- 4 July 2019
 - 7 November 2019
 - 5 March 2020