

Land & Property Liaison Group (VAT) meeting 10 April 2018 held at the offices of the Country Land & Business Association,

This document is purely intended to reflect the discussions that took place at this meeting. Any comments made by HMRC (in particular if they relate to a potential/likely change of HMRC policy) do not constitute HMRC policy or practice unless and until they are supported by published material (for example HMRC Notices, Revenue & Custom Briefs (RCBs) or Manuals)

Attending the meeting were representatives from:

- HMRC
- Law Society of Scotland
- Royal Institution of Chartered Surveyors
- Association of Taxation Technicians
- British Property Federation
- VAT Practitioners' Group
- Chartered Institute of Public Finance and Accountancy
- Country Land & Business Association
- National Housing Federation
- Institute of Chartered Accountants in England and Wales

1. Minutes of meetings

It was confirmed that HMRC would be publishing minutes of meetings, starting with the meeting of 14 December 2017. Although anonymised; the group was satisfied that these could be quite detailed, as in line with other published meetings with HMRC. Previous December minutes to be revisited and expanded accordingly.

It was agreed that the BPF would continue providing first drafts of minutes for these meetings.

HMRC further agreed to publishing appropriately submitted written queries, (anonymised), together with their replies.

2. Memorandum of Understanding

HMRC proposed some changes to the LPLG Memorandum of Understanding, and the format for submitting queries. Members were invited to comment on these proposals the end of April 2018. Whilst HMRC confirmed that generic property or construction issue were suitable for discussion by the group and that only queries specific to individual taxpayers would be excluded.

3. Guidance

- (a) HMRC had previously circulated chapters for a revised VAT Notice 742 (land and property) to a sub-group, unfortunately due to departures and lack of resources the work was delayed. In order to kick-start the process HMRC agreed to invite all group members for further comments. The work to be done in two tranches with an aim to complete no later than the end of the year.

- (b) HMRC confirmed that some amendments to Notice 708 (buildings and construction) had been sent for publishing, as had some changes to their construction manual VCONST on the matters covered by VAT Information Sheet 07/17.
- (c) HMRC said it had asked the CIOT to provide a list of points that it considered needing addressing in Notice 708. BPF would provide this, in consultation with other bodies.
- (d) HMRC drew the meeting's attention to recent amendments to the Registration manual at VATREG10010 and VATREG10020, entitled 'joint working in the construction industry'.

4. Rights to Light

HMRC were requested to re-visit and clarify their responses to the original query as the subsequent responses especially a reference to "not his own" were contradictory. It is acknowledged that this was the case and the revised response is as follows-

In the original example provided it stated that "*the right to light*" was attached to "Greenacre" and was capable of being enforced against "Blueacre" the neighbour. The owner "Greenacre" as such does not have any rights over his neighbour's land; he can merely enforce his own "*right to light*" for his own property by taking action against his neighbour in the event that his "*right to light*" is breached by his neighbour.

In such circumstances HMRC's view is that as the "*right to light*" being attached to the property that benefits from such a right and allows the owner of that property to rely on it and enforce it, then it is that property which needs to be opted to tax by the owner. It follows that if the owner of the property to which the *right to light* is attached decides to give up his *right to light* in return for consideration then they will be making a supply. Providing the supply made is initially an exempt interest in land then the supplier, if he so wishes, can choose to opt to tax the interest he holds in his own land, subject to the relevant conditions of such an option being met.

In the initial example quoted it will be for "Greenacre" to opt his own land if the supply to his neighbour "Blueacre" of agreeing to surrender his *right to light* in return for a payment is to be treated as a taxable supply as a result of an option to tax by "Greenacre."

5. Land outside the UK

HMRC had previously been asked about the ability to impute an option to tax on non-UK land for the purposes of UK input tax recovery. It was noted that this was likely to be appropriate to policy staff involved with input tax and partial exemption matters, and HMRC would now direct the query to them.

6 Voluntary aided schools

HMRC had previously indicated that construction work for (Anglican and Roman Catholic) VA schools could only be zero-rated if both the diocese and the school were recognised as charities for tax purposes.

Notification of an option to tax

- (a) It was acknowledged that problems with the status of the authorised signatory for form VAT 1614A had been encountered. HMRC proposed providing extra guidance at the start of the process in order to alert people before they started to complete the form. To assist with this the members were asked to provide examples of this problem, and that HMRC would take the matter forward as appropriate.

- (b) There was also a discussion as to whether a notification was necessarily valid if all the information requested on VAT 1614A had been provided. It was noted that, in the view of the Option to Tax Unit, a taxpayer who had failed to respond to a further enquiry would not have submitted a proper notification.

7. Option to tax – grounds of appeal

HMRC drew attention to the grounds of appeal in relation to Part 1, Schedule 10 of the VATA 1994 at Section 83(1)(wb) and Section 84(7ZA) which limited an appeal to whether the decision made by HMRC had been a reasonable decision in the light of the facts available at the time. HMRC have seen instances where appeals had been lodged on the wrong grounds and were subsequently withdrawn.

8. Sports lets

HMRC confirmed that VAT Information Sheet 08/17 had not been intended to suggest that lettings of sports facilities could not be exempt under Sch 9 Group 10, and that VSPORT2050 had since been amended to reflect the correct position.

It was noted that, following *London Borough of Ealing* and these clarifications, local authorities would, in appropriate cases, no longer need to consider the series of lets conditions in Sch 9, Group 1, Note 16(b) in order to exempt their relevant supplies.

9. Litigation update

HMRC indicated that:

- They were unable to discuss *Fortyseven Park Street* or *Hanuman* because the litigation had not yet been concluded.
- They were also unable to discuss *Taylor Wimpey*, because they could not rule out further litigation.
- They were still considering the implications of *Languard* and *MacPherson, Greenisland and St Brendan's*.
- They considered *PGPH* to have endorsed their interpretation of the anti-avoidance rules for the option to tax.

10. Next meeting

It was agreed that attendance might be improved if meeting dates were determined further in advance, and avoiding school holidays. It was suggested that meetings might be set, a year or more at a time, for late January, late May (avoiding half-term) and late September. The next meeting would be in September 2018, and the following meeting in January 2019 – dates to be advised.

11. Action Points

1. HMRC to circulate finalised minutes of the meetings of 14 December 2017 and 10 April 2018 before publishing.
2. Members to consider HMRC's proposed amendments to the Memorandum of Understanding and format for written questions, and to revert to HMRC by 30 April (para 2).
3. HMRC to circulate drafting for Notice 742; members to consider and revert to HMRC (para 3(a)).

4. BPF to prepare a list of changes needed to Notice 708, to seek contributions from other members and to provide to HMRC for consideration (para 3(c)).
5. HMRC to provide an update on para 5.
6. HMRC to provide an update on para 6.
7. Members to provide HMRC with examples of job titles held by an “authorised signatory”, so HMRC can improve guidance in relation to issues relating to authorised signatories for VAT 1614 forms, (para 7(a)).