

Land & Property Liaison Group (VAT) meeting – Wednesday 19 September 2018, held at 10 South Colonnade, E14 4PU.

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)

Introductions/Housekeeping

1. Attending the meeting were representatives from, -

National Housing Federation

British property Federation

Association of Taxation Technicians

Chartered Institute of Taxation

Chartered Institute of Public Finance and Accountancy

Institute of Chartered Accountants in England and Wales

Confederation of British Industry

Law Society of England and Wales

VAT Practitioners' Group

Law Society of Scotland

Chartered Institute of Housing

HMRC

Matters arising from previous meeting (10th April 2018).

2. i) HMRC reiterated that where a taxpayer in their view had provided all the relevant information required as part of their notification of an Option to tax, but had not responded in a timely manner to a query from the OTT unit, HMRC may consider that proper notification of an option to tax had not been made.

LPLG members noted that the validity and an acknowledgement of an option by HMRC is important, as certainty is required as to the OTT status of a property by buyers in the context of property transactions, especially where TOGC treatment is being sought.

ii) It was confirmed that LPLG meeting minutes would be published online in the same way as minutes of the meetings of the JVCC.

iii) HMRC agreed that the query template used by members for the LPLG meetings could be used to submit land and property VAT queries to HMRC other than in connection with a specific LPLG meeting – as long as the queries were ones affecting a number of businesses and not single taxpayer issues. HMRC would provide a written response that would then be appended to future LPLG minutes, which would mean HMRC's response would be available online.

Templates and Memorandum of Understanding

3. HMRC noted that very few comments had been received from LPLG members on a revised version of the LPLG's Memorandum of Understanding (MoU). Members were asked to provide comments by the end of October 2018 to BPF who will collate and forward HMRC. HMRC to then consider and comment by end of November 2018.

ACTION – BPF to forward any collated comments to HMRC by end of October 2018

ACTION – HMRC to respond to any comments received from the BPF by end of November 2018

Future of LPLG

4. It was acknowledged that the LPLG could be more effective than it currently was and that rebuilding mutual trust between all was important if there was to be a future for the group. HMRC confirmed that it did not view the meetings as simply fulfilling a stakeholder engagement requirement, but rather a way of identifying early the most pressing land and property VAT issues. If little or no benefit was being realised by HMRC or other members then HMRC was prepared to withdraw from the group. HMRC noted that the tone of some communications was unhelpful, and that communicating in a professional manner was important in order to make this engagement more productive. HMRC explained that due to workload and resourcing issues it was increasingly necessary to prioritise work, in the knowledge that not everything on the 'to-do list' would be dealt with in the near future. Therefore, the help of the LPLG members in prioritising sector issues would be appreciated.

Suggestions for achieving better and meaningful engagement included –

- Triage and prioritising issues by LPLG members prior to raising queries
- Acknowledgment of queries/responses received by HMRC
- Agreeing meeting dates for the year in advance
- To meet three times a year (LPLG members to assist in hosting meetings if HMRC resources not available)
- Attendance as far as possible by relevant HMRC policy and operational teams, alternatively written responses to be provided
- An indication of an issue's scale and impact, with examples allows HMRC to assess the information provided by members on particular issues and helps HMRC to allocate scarce resources accordingly.

ACTION – HMRC to confirm meeting dates up to December 2019

It was agreed that BPF would continue to prepare a first draft of LPLG meeting minutes and seek to provide this to HMRC within two weeks of the meeting. HMRC would then review and amend as necessary, before seeking to circulate to all LPLG members within two months of the meeting date and publishing on the JVCC's website.

Authorised Signatories – Option to tax

5. As indicated at previous LPLG meetings, there has been an increasing focus by HMRC to ensure that an authorised signatory signs off an OTT notification and VAT 1614 forms. This has generated more queries by the OTT Unit to taxpayers in relation to OTT notifications and queries as to who is an authorised signatory. In response to these taxpayer questions, HMRC has prepared a draft Annex to Notice 742A which sets out who is an acceptable authorised signatory for a given entity and have also suggested a form of prescribed wording that can be used to provide individuals with the relevant authority by the taxpayer seeking to

opt to tax his property. The draft Annex is to be circulated after this meeting to all members of the LPLG who are to provide suggestions and feedback to the circulated draft by Friday 19th October 2018.

ACTION – LPLG members to provide feedback on the draft Annexe by Friday 19th October.

VAT Notices

6. i) HMRC has received and are considering LPLG members' comments on the proposed revised drafts of chapters 1-7 of an updated VAT Notice 742 Land and Property. In the meantime, HMRC has also circulated to the LPLG members the proposed drafts of the remaining chapters of VAT Notice 742 for comment. HMRC confirmed LPLG member organisations could share this draft with their own members. All suggestions and comments on these remaining chapters to be provided by Monday 15th October 2018.

ACTION – LPLG members to provide feedback on chapters 8-13 of draft revised Notice 742 by Monday 15th October 2018.

ii) HMRC confirmed that while a new version of Notice 708 had briefly been published on the gov.uk website, it contained various inaccuracies as a result of which it was immediately withdrawn and the old Notice restored. HMRC continues to work on a revised Notice 708.

ESC 3.18

7. HMRC noted that the ESC 3.18 VAT: exemption for all domestic service charges was being misapplied with the result that in some cases the services of estate/block management companies or similar were being treated as exempt when they should have been taxable.

In order to provide clear guidance and allow taxpayers an opportunity to correct any errors that may have arisen HMRC has responded by publishing Revenue and Customs Brief 06/2018, VAT Information Sheet 07/2018, and a new Chapter 12 in VAT Notice 742 Land and property. All taxpayers must account correctly from 1st November 2018 and any inconsistent rulings provided in the past by HMRC relating to ESC 3.18 are withdrawn. HMRC confirmed to the LPLG that it would not be applying penalties against taxpayers for misuse of the ESC prior to that date.

The wording of the RCB 03/2018 was discussed with HMRC confirming that they saw the concession as applying only where there was a mixture of freeholders and leaseholders on an estate. HMRC did not see the wording in the RCB representing a change in the way the concession was to be applied or that any new restrictions were being imposed.

Litigation update

8. i) *Summit* – HMRC confirmed litigation had now concluded. The decision had clarified that a restriction on separate use or disposal was not created where planning consent specified use of the property by a particular institution or organisation.

There were discussions about potential impact of the decision paragraph 15.8 of VAT Notice 708 Construction (regarding whether a building is built relying on RRP or dwelling status). HMRC expressed the view supported by legal advice that a building could be either RRP or a dwelling, but not both. Members disagreed and referred to discussions that took place

between the industry and HMRC and resulted in the issue of VAT information Sheet 02/2014 and the current paragraph 15.8 of Notice 708.

ACTION - HMRC to provide an outline of the legal analysis supporting the view that a building cannot be both a dwelling and RRP.

(HMRC also confirmed that the DIY form was being updated to take taxpayer feedback into account. The new form will be available in its entirety in PDF format, to facilitate its completion by taxpayers.)

ii) *Sibcas* – HMRC noted the decision and accepted that in considering whether a supply is one of land, one needs to consider the broader commercial context within which the supply is made and whether it is a passive activity.

AOB

9 . i) Input tax and the CGS. HMRC acknowledged that they had been asked through the LPLG about the recovery under VATA s.26(2)(b) of UK input tax attributable to non-UK property transactions. In particular, where a property, which if it had been in the UK and would have been opted to tax by the supplier then those supplies would have been taxable.

ACTION - HMRC to forward the query to the relevant team for a response

ii) HMRC also acknowledged receiving queries on the ECJ judgments in *Iberdrola* and *Gmina Ryjewo*, and on the Capital Goods Scheme consequences of deregistration following a zero-rated grant of a lease or leases.

HMRC confirmed that these queries had been passed to the teams responsible but responses were currently not available. HMRC however confirmed that there would be no change to their policy on planning gain agreements, as set out in VAT Notice 742 Land and property, chapter 8 following *Iberdrola*. However, members were invited to provide examples where the Judgement in *Iberdrola* may cause an impact.

ACTION - HMRC to obtain responses from other policy teams as appropriate.

- **Members to provide examples.**

iii) Members commented that recent letters sent to Higher Education Institutions (HEIs) by HMRC recommending review of their VAT treatment of recent construction work relating to Relevant Charitable Purpose rules were unclear. Members felt the ‘VAT common error’ paper included with the letter was confusing, as it did not actually set out identified common errors, but rather highlighted a number of questions that HEIs should consider. This left the HEIs none the wiser about what the common errors actually were.

iv) The recent RCB 09/2018 on the VAT treatment of damp-proofing products stated that “business to business” supplies of Energy Saving Materials (ESMs) are standard rated”. Members pointed out that a business (such as a care home, or a residential landlord) could be the ‘final customer’ for the purposes of the rules. HMRC agreed and stated they would clarify the position when the relevant VAT Notice is amended, but would not now amend the RCB.

v) BPF representatives had initially considered creating a table of “authorised signatories” for notifying an Option to tax and to sign VAT registration forms for a range of different entities. This initiative had been superseded by HMRC’s proposed annexe to

Notice 742A, (see point 5 above). HMRC indicated that Tribunals have in the past rejected notifications of an option as they were not signed by an “authorised person”. Also, unless such authorisation specifies that the signatory has the authority to complete forms and notifications arising from Part 1, Schedule 10 of the VATA then following the decisions of past Tribunals they cannot be accepted. HMRC agreed to identify the cases in question.

ACTION: HMRC to identify the relevant tribunal cases.

HMRC further indicated that it may be a useful exercise for taxpayers to review historic notifications to check whether they had been made by someone with the relevant authority. In such cases, HMRC noted that it would be unlikely to refuse a belated notification if the property had been *de facto* treated as opted and VAT accounted for appropriately.

vi) Members noted, that although not technically correct, sub-contractors working on zero or reduced-rate projects often charged VAT at a standard rate to contractors or developers. However, HMRC compliance officers have taken a pragmatic approach on the basis that the tax effect was revenue neutral. It was felt by members that such an approach should be consistently applied. Asking businesses to correct the VAT treatment on historic supplies in such circumstances is time and cost-intensive and merely leads to a ‘money-go-round’ between the parties. This often raises no additional tax, but businesses can suffer real cash flow difficulties if any delays in recovering money from any party involved arises.

HMRC noted that individual compliance officers have a certain amount of authority in how to deal with certain situations involving VAT in construction supply chains and this was out of the policy team’s control. It was also suggested by BPF that this issue may cease once the new domestic reverse charge on building services comes into effect.

vii) HMRC indicated that the British Beer and Pubs Association (BBPA) were consulted and had agreed with HMRC to the withdrawal of the VAT Brewers’ Society Agreement. LPLG members stated that many BBPA members were unhappy with this. In addition, this could also result in increased challenges to the historic 90:10 split of the VAT liability of rental or sale income from pubs with a residential element.