

Land & Property Liaison Group (VAT) meeting. 14 December 2017 at the offices of BDO, Baker Street, London

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 -

- British Property Federation
- Confederation of British Industry
- Country Landowners Association
- Royal Institution of Chartered Surveyors
- Association of Taxation Technicians
- Institute of Chartered Accountants in England and Wales
- National Housing Federation
- Chartered Institute of Taxation
- Law Society of Scotland
- Law Society of England and Wales
- Chartered Institute of Public Finance and Accountancy
- Association of British Insurers

Action Points from previous meetings

AP1 – facades	VAT Information Sheet now published
From April 2016 meeting – annexes and covenanted Build to rent projects	Carry Forward.
AP2 – TRMs and circularity	Closed last time.
AP3 – VAT Notice 742 Land and property	Action Point: To be included for discussion at a future meeting once work completed. To arrange a meeting of the relevant sub-committee for January 2018.
AP4 – error in 708	To be actioned as soon as possible.
AP5 – missing in July minutes	Assumed closed.
AP6 – person converting status	Closed last time.
AP7 – managing agents	Closed last time.
AP8 – no description	Closed as of last time.
AP9 – missing in July minutes	Assumed closed.
AP10 – student accommodation and Note 2(c)	Ongoing. Subject of litigation – HMRC’s appeal in Summit. Also briefly discussed “cluster flats”.

1. Review of the Memorandum of Understanding and request template

HMRC wanted to review the Memorandum of Understanding template to ensure it was still suitable for purpose with input from the group as a whole. This would include the frequency of the meetings and to ensure the request template (just like the meeting itself) was for sector-wide issues only (not customer-specific ones).

HMRC also confirmed they would be publishing the meeting minutes on the gov.uk website in the future. These will be anonymised – the format is yet to be agreed

As part of the review, HMRC wanted to review the number of trade representatives attending in order to ensure that all sectors who wanted to be represented were represented and could make their members' views known. As an initial step all trade bodies and associations were asked to confirm their desire to continue participating and to confirm their representative. Currently there are 21 representatives from 17 trade bodies/associations.

Action Point for all trade representatives – To obtain confirmation that the trade body they represent wishes to continue participating in this Liaison Group and who they are nominating to be their representative on the Liaison Group. The appropriate confirmation to be provided as soon as possible, preferably no later than the next meeting of the Land and Property Liaison Group.

2. The Option to Tax Review

The *Value added tax: routes to simplification* released in November 2017 was discussed, in particular the Option To tax recommendation which could be found at pages 61-65 of the report, see link

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/657213/Value_added_tax_routes_to_simplification_web.pdf

The CIOT suggested HMRC consider a system where the option to tax is not notified to HMRC at all. This approach is used in other member states. HMRC said that whilst other member states did this there were conditions attached.

As recommended by the Office for Tax Simplification, HMRC stated they would be reviewing the exempt, zero rated and reduced rated schedules as a long term project. HMRC referred to Brexit changes and a careful review of the cost implications of this exercise.

In the shorter term HMRC wanted to focus on operational matters and offer more digital solutions; which would include an option to tax database which would be ready as a beta version in about a year's time. The data would be available to businesses so they could see their own option to tax information.

The CLA raised concerns as to how accurately the opting of rural land is recorded given that HMRC just operate on an address basis at the moment and do not record title numbers.

RICS enquired whether the new system would be able to deal with VAT groups so that deregistration of single companies in a VAT group does not trigger VAT assessments where properties are retained by the VAT group as a whole.

Issues around belated notification were also discussed where a company had treated a property as opted but no notification had been made.

The issue of confidentiality was discussed in terms of who might be able to access the database.

HMRC confirmed it would be reviewing the option to tax and all areas would be considered

3. VAT Form 1614

HMRC had received concerns that Option to Tax requests were being rejected due to signatories not being authorised to sign the VAT 1614A form. An example was provided where the form was signed by Head of Accounts or a non-executive director but not an actual director or partner of the company concerned. In these circumstances HMRC was of the view that it must currently reject the notification.

It was suggested that the significance of the signature and the status of the person making the signature was highlighted more prominently on the form.

It was agreed that it would be helpful if the form was also offered on the website as a pdf document so people did not have to complete the online form page by page before reaching the signature page. The current version is also not saveable which is frustrating.

Action Point - HMRC said it would look at the VAT1614 form and produce a revised version for discussion.

4. Litigation Update

- a) Iberdrola C-132/16 - HMRC confirmed that there would be no change to the policy set out in Notice 742, para 8.4, following this case.
- b) PGPH TC/2014/03441 – HMRC was unable to discuss this because the litigation process was still on-going.
- c) Sibcas UT/2016/0234 – This has been appealed to the Court of Session, so discussions were restricted.
- d) Hanuman TC/2016/01155 – HMRC was unable to discuss this because the litigation process was still on-going.
- e) Summit TC/2016/3722 – This has been appealed to the Upper Tribunal, so discussions were restricted.

5. Questions raised by Group members prior to the meeting

- a) Rights of light - HMRC had provided an interim response. It was noted that there were two issues: i) whether the surrender of a right to light was capable of exemption; ii) whether, if so, it was taxable as a result of an option exercised by the recipient of the payment over its own land, or the land over which the right had been enjoyed. It was ii) that had been the subject of the original enquiry at the LPLG in March 2013.

HMRC had indicated at the meeting in October 2016 that they were unable to discuss i) because of pending litigation on rights over land (albeit not rights to light). They confirmed that this was still the case, and the litigation was still expected.

On ii), correspondence from 2017 had been circulated in which HMRC had provided a view, which appeared to contradict its position at the LPLG meeting of 8 July 2014, where it had 'explained that, where a taxpayer surrenders his right to light, the land which needs to be opted is the land over which the right is enjoyed, and not his own'.

Action Point HMRC to provide clarification.

- b) Languard and MacPherson - HMRC had provided a response, attached, indicating that it was still considering the implications of these cases.
- c) Option to tax and continuity - HMRC had provided a response – see Annex below.
- d) Meaning of 'incidental or trivial payments' - HMRC had provided a response, but it was noted that this offered no certainty to taxpayers, and still depended on the circumstances of each individual case.
- e) White goods and CGS - HMRC provided the following response:

Q. If input tax is blocked on 'white goods etc.', does the VAT still fall to be adjusted under the CGS?

Response - The answer to the above query is no, when calculating the baseline for the CGS the original entitlement to deduction of input tax means the entitlement to

deduction under sections 24 to 26 of the VATA and would automatically exclude the blocked input tax.

Q. The supplementary question as to whether a property is subject to the CGS if the VAT-bearing expenditure other than that on the white goods is less than £250K?

Response - When calculating the value for CGS purposes all the VAT bearing capital expenditure is taken into account. It is highly unlikely that the value of the white goods would be the determining factor although we accept this is possible.

It was noted that it was rather more likely that white goods would bring a property into the CGS in the context of care homes, student accommodation etc than in typical dwellings.

- f) Sch 8 Group 12 - HMRC had provided a response. However, the matter may now be raised at the JVCC.
- g) Trading concessions - HMRC had provided a response and confirmed that the existing guidance is extant until such time any changes are made and published.
- h) Construction labour reverse charge - HMRC had provided a response and it was noted that a series of meetings had been arranged with various bodies. It was highlighted that contractors would need to determine whether sub-contractors' supplies were zero- or reduced-rated, and that a possible solution was to allow them to choose to apply the reverse charge at the standard rate regardless. It was not apparent that this would have any revenue implications.
- i) Rent-free periods and variations to a lease - HMRC had provided a response, see attached. This had indicated that a rent-free period given to a tenant in connection with a variation to an existing lease was likely to be consideration for a supply by the tenant – in terms of Notice 742, para 10.2, the tenant was doing something in return for the rent-free period. It was noted that this was different from a rent-free period given to a new tenant, where a rent-free period would not normally be consideration, and that for an existing tenant the rent-free period might be consideration for the surrender of the existing interest.
- j) Farmhouses – 70% recovery on new builds - It was noted that HMRC was not consistently adopting the position that it had outlined to the LPLG on 14 November 2012, and that this was creating problems in practice. HMRC said it would consider its current treatment of farmhouses and whether it still reflects actuality, otherwise guidance can be amended accordingly.

Action point: HMRC to consider and to comment in guidance as appropriate.

- k) Overage - This had been the subject of a previous enquiry, and it was noted that problems were arising in practice. HMRC said that whether Section 96(10A) of the VATA is applicable will depend on the facts of the case and whether supplies are indeed made at a different time after the making of the original grant and whether that supply is made by the same entity as the one that made the original grant. The one or two examples it has seen show that the supply is being made by the successor and not the original supplier of the grant. Indeed what does happen if the so-called overage is not paid? Who can pursue the debt or even re take ownership of the property if a default occurs in the payment?

HMRC emphasised that without specific evidence and sight of the relevant documents it was impossible to provide a definitive answer other than that it will depend on the facts of particular situation, or even whether paragraph 40 of Schedule 10 is appropriate.

- l) DIY claims - HMRC advised that it was aiming to respond in January 2018 in relation to the processing team splitting single supplies of construction services into its component parts and then disallowing VAT refunds on the parts that in isolation would not qualify e.g.

a hire items (such as a skip and plant hire). It was noted by a trade representative that this no longer appeared to be happening.

Next meeting

To be agreed.

Annex – 14 December 2017

HMRC response to Item 5(c) of agenda – Option to tax continuity - BPF.

The Book of Guidance VATREG at 42000 deals with the questions posed on continuity following death or insolvency. The relevant law can be found in Sections 46(4) and 46(5) of the VATA and VAT Regulations 1995, regulations 9 and 30.

The official appointees in the case of death or insolvency are tasked to administer the deceased's estate or the property of the defaulting debtor. The liability of any supplies made by the deceased's estate or the defaulting debtor will be taxable if the deceased or the defaulting debtor has opted to tax their property.

Indeed, it may be appropriate to include something on this either in Notice 742A Option to tax or within VATLAP when they are next reviewed.

HMRC response to Item 5(g) of agenda – Trading Concessions - BPF

HMRC policy has not changed. The same tests as per paragraph 2.5 of Notice 742 are applicable whilst further guidance can be found in VATLP at Section 06200, which deals specifically with trading concessions and provides general examples of what may, or may not be seen as an interest in land. Whether a particular example applies will depend on the facts of each individual case.

Whether a licence specifies the type of goods sold may be just one factor that would need to be considered in the context of the overall supply being made by one party to another. However, the key factor will always be establishing the exact arrangements between the parties. In other words has an interest in land been granted or a right to trade as described by the ECJ in *Sinclair Collis C-275/01*. Indeed what is the reality? What is the customer seeking, is it indeed an interest in land or the right to trade?

HMRC response to Item 5(i) of agenda – Rent free periods and variation of a lease - BPF

The guidance is there to be applied by a trader to the circumstances they find themselves in. If there are uncertainties/difficulties as to the correct liability to be applied then a clearance can be sought by the trader providing all relevant facts are disclosed.

Section 5(2)(b) of the VATA states -

“ anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right), is a supply of services”

It therefore follows that if the tenant does something like agreeing to a variation of an existing lease in return for receiving a rent free period then there is very likely a barter transaction occurring and if it is possible to value the given consideration then there will be a supply. This is exactly what the final paragraph at Section 10.2 of the VAT Notice 742 is indicating.