

Land & Property Liaison Group (VAT) meeting – 12th November 2020, held virtually.

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)

Matters arising from previous meeting (21st January 2020)

HMRC had provided alongside the minutes of the previous meeting written responses to a number of actions and queries raised at that meeting

Mydibel

In response to queries raised at previous LPLG meetings, HMRC were content with the CJEU decision in *Mydibel*, noting that it was in line with HMRC's policy on CGS anti-avoidance. HMRC also referred to the UK case of *Balhousie*, expressing its view that the different underlying circumstances in that case resulted in a different VAT analysis to *Mydibel*.

ACTION 1 – HMRC to organise a meeting between LPLG members and HMRC (Ishrat Ali and Wallace Farley) regarding the broader review of partial exemption and the CGS undertaken in 2019. It was agreed that this matter should be pursued outside of the LPLG meetings.

Landlinx.

HMRC confirmed that it would not be appealing the *Landlinx* decision, which it lost in the First Tier Tribunal, though it was still considering the implications of certain aspects of the decision. HMRC did not intend to make any changes to its published guidance on the VAT treatment of call options.

HMRC confirmed that taxpayers could rely on Notice 742 para 7.4 so far as it concerned the grant of a call option, although this did not necessarily extend to the assignment or surrender of a call option. LPLG members stressed the importance of clear guidance on this point, as HMRC's litigation had introduced considerable uncertainty into an area that was previously felt to be well understood. HMRC suggested that the analysis would always depend on the facts and circumstances of individual cases, but agreed to consider and publish guidance on a set of examples put together with input from LPLG members.

Action point 2 – LPLG reps to provide examples call options. (See action point 3 for how this will be taken forward.)

Overage

HMRC would be setting up a compliance forum to consider real estate VAT issues as they arose and support the HMRC VAT policy team by highlighting issues that HMRC compliance teams typically get first sight of. One of the current issues concerns the VAT treatment of overage payments and HMRC expressed a desire to better understand the commercial contexts within which these arose and how such transactions were structured.

LPLG members noted that the main uncertainty was around what HMRC considered to be a land-related supply and what was a supply of services. It was agreed that these issues would be considered by a sub-group of the LPLG and a meeting convened in the coming weeks.

ACTION 3 – LPLG members to express interest in joining sub-group to discuss coverage and other minor interests in land such as call options (RAISED IN ACTION POINT 3). HMRC to arrange initial sub-group meeting.

EU exit –

In response to a query from an LPLG member, HMRC provided the following responses–

Q1 - Non-resident supplier of land related services to UK established VAT registered customer – currently compulsory reverse charge. Presumably from 1st January, reverse charge will continue to apply, or will it ?

A1 - The domestic reverse charge on services from abroad will continue from 1 Jan 2021, but the place of supply rules on land-related services will need to be considered. The place of supply rules remain the same.

Q2 - Non-resident supplier of supply and install services to UK established registered customer - currently non UK business can register for VAT in the UK, or use simplification whereby the UK customer accounts for the VAT. Presumably this simplification will not be available from 1st January, and non UK supplier will be required to register for VAT, or will they ?

A2 - The simplification is only available for suppliers registered in other member states. From the end of the transition period, the relief will continue to apply for goods installed in Northern Ireland but will cease to apply to goods installed in GB.

Biodiversity net gain / Conservation grants

HMRC was considering the VAT implications of conservation grants and arrangements entered into by landowners to promote biodiversity net gain. It was agreed that this matter should be further considered separately with interested with input from LPLG members.

ACTION 4 – LPLG members to express interest in this issue to HMRC and provide further examples.

RCB 12 (2020) – compensation and termination payments.

HMRC's recent communication on changes to its policy regarding early termination payments and other compensations under contract had caused significant concern and uncertainty across a range of business sectors. Following meetings with and representations from industry stakeholders, HMRC was considering its position and would be providing a further update at or before the next meeting of the Joint VAT Consultative Committee (JVCC), scheduled for 26th November.

It was noted that there were additional issues in relation to construction contracts, and further information would be provided to HMRC.

ACTION 5 – HMRC to provide an update on its position regarding land and property-related queries raised by JVCC members. These are due to be discussed at the JVCC meeting on 26th November.

ACTION 6 – Law Society of Scotland to provide further information to HMRC regarding compensation in construction contracts.

Update – HMRC are continuing are continuing discussions with BPF and JVCC regarding clarification and further guidance. predominately around dilapidation payments.

DIY scheme

HMRC confirmed that they had reviewed their position on time limits following the Tribunal decision in *Farquharson*. Where a completion certificate was used as the evidence of completion, they now regarded the date of the certificate as the date of completion from the start of the three month timeline.

HMRC also indicated that they would be seeking an amendment to the regulations, so as to allow electronic submission of claims, and were considering the recommendations in the Office of Tax Simplification's 2017 report on VAT. Those had included allowing claims for professional services, and extending the time limit for submission. It was suggested that there was no apparent reason for there to be a time limit at all, but that a four-year limit would align with VAT claims generally.

HMRC had been working on new claim forms, and on new guidance to replace the notes to the forms. These were now on hold pending changes to the regulations, but should be published in 2021. LPLG members would be given an opportunity to comment on drafts.

It was noted that the DIY unit had put procedures in place to expedite claims during the Covid pandemic, although there had been reports of payments being delayed, and of papers being lost.

ACTION 7: HMRC to share draft revised DIY scheme application form and guidance

Option to tax notification period and electronic signatures

During the Covid pandemic, HMRC had been accepting notifications with electronic signatures, and had extended the time limit for notifying from 30 days to 90 days. The latter measure would now apply to options made up to 31 March 2021, and HMRC would be considering at that time whether to make the arrangements permanent.

HMRC reported that, between April and November 2020, some 4,000-5,000 notifications, out of a total of 17,000, had used electronic signatures, while there had been some 1,000 late notifications, about 90% of which had ultimately been accepted. It was noted that time limits existed in order to provide some protection to buyers and tenants, although HMRC indicated that the extended limits were beneficial operationally, because a belated notification involved about four times as much work for them as a timely notification. HMRC also suggested that it might be worthwhile to review guidance in this area.

Guidance update – Notices 708 and 742

HMRC confirmed that work on Notice 742 had been halted, but would resume in 2021.

Amendments were, however, proposed for Notice 708. Specifically:

- HMRC would be reviewing their guidance on the 'village halls' provision, following the decision in *Swanage Sea Rowing Club*, which they would not be appealing. This work would take account of the various decisions in this area over the previous five years or so.
- There would be some clarification of the borderline between care homes and hospitals.
- Para 4.3 would be amended to make clear that the reference to 'VAT incurred on construction and selling costs' included any 'services relating to the construction', as at PE75000.
- The Notice would confirm that blinds and shutters qualified as 'building materials' in line with the decision in *Wickford Development Co Ltd* (more detail below).
- Reference would be made to the domestic reverse charge for building work, due to be introduced on 1 March 2021.

These changes would be made in 2021. LPLG members would have the opportunity to comment on a draft in New Year 2021.

Electric blinds

HMRC confirmed that following the recent decision in *Wickford Development Co Ltd* (TC07864), manually operated roller blinds and timber shutters being installed into dwellings are 'building materials' and can be 5% or 0% rated on a qualifying project where they are supplied and installed by a supplier.

Where a blind is motorised and that motor is not integral then the blind element can still be lower VAT rated but the motor must be 20% rated as an electrical appliance as per VCONST13730. Installation charges can be zero rated on new builds. HMRC stated that where a roller blind has a motor integral in the roller body then the blind is no longer 'building materials' for VAT purposes but then becomes an electrical appliance and 20% VAT rated in its entirety even though the outside impression is that of a manually operated blind.

It was pointed out to HMRC that the tribunal decision referred to in the VCONST pre-dated the relevant decision in *Rainbow Pools London Limited* (TC020800), in which it was accepted that a motorised pool cover was all zero rated on the basis that the cover was not 'an electrical appliance' as its essential nature was that of a pool cover and this was not changed by the addition of a motor. Certain aspects of HMRC guidance (e.g. VAT431NB and VATSC11113) also support the view that electric blinds could be treated as building materials.

ACTION 8: HMRC to consider extent to which VAT considerations of motorised blinds are similar to those for motorised pool covers and confirm view at next LPLG meeting.

Any other business

LPLG members noted letters sent by HMRC to taxpayers involved in residential development requesting information on the stage in construction at which they zero-rate their supplies of dwellings and other qualifying buildings (golden brick). HMRC confirmed that these were not a result of discussion held at the January 2020 LPLG meeting.

It was mentioned that some members had received letters from the OTT Unit where the wording was unhelpful. The letters appeared to be prepared using out of date templates.

ACTION 9 – LPLG members to provide examples of the letters and HMRC will investigate.

Date of next meeting:

- The next meeting will take place from 10.00-12.00 on Tuesday 19th January 2021.

Appendix A – list of meeting attendees

Attendees	
Ben Tennant	National Housing Federation
Colin Smith	British Property Federation
Dan Smith	Chartered Institute of Housing
David Jordorson	Association of British Insurers
Hugh Mitchell	Association of Tax Technicians
Ion Fletcher	British Property Federation
John Butterfield	Royal Institution of Chartered Surveyors
John Voyez	Chartered Institute of Taxation
Julian Potts	British Property Federation
Julie Towers	Institute of Chartered Accountants in England & Wales
Karen Regan	Chartered Institute of Public Finance & Accountancy
Louise Speke	Country Land & Business Association
Martin Scammell	British Property Federation
Martin Shah	Law Society
Robert Plumbly	VAT Practitioners Group
Ronnie Brown	Law Society of Scotland

HMRC	
Andrew Tucker	
David Millar	
Ian Broadhurst	
James Ormanczyk	
Lisa Allen	
Melanie Williams	
Nick Henderson	
Phil Askew	
Rosie Brown	
Ross Irwin	
Sandy Mackie	
Wallace Farley	