

VAT Consultation

What is in this for local councils?

Local councils will wish to be aware of a European Commission consultation on VAT rules which could affect their ability to reclaim VAT with a consequent increase in the cost of community projects.

The European Commission consultation paper *Review of existing VAT legislation on public bodies and tax exemptions in the public interest* has been initiated owing to concerns about tax income and about creating more opportunities for business in areas traditionally generally covered by public services but increasingly now open to competition. It should be borne in mind that the consultation is European Union wide and as a consequence has to take account of the systems in place in many different countries.

As councils will be aware, Section 33 of the Value Added Tax Act 1994 provides the basic power for local councils to obtain refunds of VAT in certain cases, which is of considerable help to councils in supporting the community:

(1) Subject to the following provisions of this section, where—

(a) VAT is chargeable on the supply of goods or services to a body to which this section applies, on the acquisition of any goods by such a body from another member State or on the importation of any goods by such a body from a place outside the member States, and
(b) the supply, acquisition or importation is not for the purpose of any business carried on by the body,
the Commissioners shall, on a claim made by the body at such time and in such form and manner as the Commissioners may determine, refund to it the amount of the VAT so chargeable.

(2) Where goods or services so supplied to or acquired or imported by the body cannot be conveniently distinguished from goods or services supplied to or acquired or imported by it for the purpose of a business carried on by it, the amount to be refunded under this section shall be such amount as remains after deducting from the whole of the VAT chargeable on any supply to or acquisition or importation by the body such proportion thereof as appears to the Commissioners to be attributable to the carrying on of the business; but where—

(a) the VAT so attributable is or includes VAT attributable, in accordance with regulations under section 26, to exempt supplies by the body, and
(b) the VAT attributable to the exempt supplies is in the opinion of the Commissioners an insignificant proportion of the VAT so chargeable, they may include it in the VAT refunded under this section.

The consultation, which could impact on the opportunities presented by Section 33, is designed 'to help the Commission develop its thinking' given that 'review and possible revision of the VAT rules on the public sector is one of the priority areas of the European Commission's further work to create a simpler, more efficient and more robust VAT system in the EU.' The options being considered are:

Full taxation of public bodies and activities in the public interest. Although, the consultation indicates that this option is unlikely to be carried forward, local councils would not wish to see any chance of this being implemented as it would completely remove the ability for local councils to reclaim VAT. If implemented this would remove the zero rate for VAT on new build community assets, such as village halls, and would remove the ability of local councils to reclaim VAT on goods bought by them for the benefit of the community.

Full compensation of input VAT at EU level. Local councils reclaim VAT and they would no doubt welcome a refund system which enabled work to take place on village assets with a subsequent VAT refund. This can apparently be implemented by national legislatures without recourse to the European Union but the European Commission is considering whether implementing a uniform refund system across the European Union would be worthwhile.

Deletion of special rules relating to public bodies (Article 13 of the VAT Directive), while keeping all or most of the current exemptions in the public interest.

This option explores concentrating on the activity rather than which body is carrying out the activity e.g. it might equalise private and public sector activities. What councils would not welcome is a move to withdraw their ability to reclaim VAT for any of their activities which are specifically focussed on supporting the community.

Change the treatment for specific sectors

Again this could be problematic for local councils depending on how a reclassification of sectors for taxation purposes is effected. However, the consultation refers to specific sectors, such as hospital and postal services. It is telling that the options explored refer to the 'advantage' 'of moving a step further forward towards reducing the scope of VAT exemptions, which would help Member States in the current process of fiscal consolidation.'

The European Commission indicates that it welcomes contributions from all parties interested and a recent extension of the deadline for submissions perhaps indicates that there has been an unexpectedly high level of interest in this issue. Please note that any contributions will be published on the internet. Visit this page for details of how to make your own views known:

http://ec.europa.eu/taxation_customs/common/consultations/tax/2013_vat_public_bodies_en.htm

References to local councils: None but applicable throughout.

Pages: 15

Deadline: **EXTENDED** to 25 April 2014

References

Information on the European Commission's consultation can be found at

http://ec.europa.eu/taxation_customs/common/consultations/tax/2013_vat_public_bodies_en.htm.

The Commission Communication which sets out their intentions and priorities for securing a more robust VAT system, adopted in December 2011 can be found at

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_85_1_en.pdf

The Value Added Tax Act 1994 is available at <http://www.legislation.gov.uk/ukpga/1994/23/contents>

A National Association of Local Councils Financial Briefing F01-13 on the EU review of the EU VAT rules for the public sector is available through your local Association.