

Appendix D – Guidance to new HMRC VAT ruling

HM Revenue and Customs (HMRC) issued a Brief - Revenue & Customs Brief 3 (2023) - on changes to the VAT treatment of Leisure Services supplied by Local Authorities. This note explains the background, what has changed, and what Authorities need to consider now.

Background

HMRC have historically regarded the in-house provision of leisure services by Authorities to be a taxable business activity. Some Authorities have chosen to outsource leisure centres to Charitable Trusts, which were regarded by HMRC as eligible bodies for a VAT exemption on sport supplies, meaning that they don't need to charge VAT to users of the sports facilities covered. However, the Trusts are also unable to recover much of the VAT incurred on related expenditure.

In 2017, following litigation by the London Borough of Ealing, HMRC accepted that Authorities could also be treated as eligible bodies for the VAT exemption used by the Trusts. They didn't force Authorities to apply VAT exemption, and many chose not to due to the impact on their Partial Exemption calculations – which could have adversely affected VAT recovery on expenditure across the whole Authority.

More recently, Chelmsford City Council, Midlothian Council and Mid-Ulster Council all successfully contested that leisure services were provided under a special legal regime, which was applicable only to Authorities. Within England, this is Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (“the Act”). Charges under special legal regimes can only be treated as non-business if doing so would not significantly distort competition. However, HMRC issued their Brief conceding this aspect before the courts could consider it.

The advantage of non-business treatment under Chelmsford (or Midlothian in Scotland and Mid-Ulster in Northern Ireland), rather than VAT exemption under Ealing, is that income is still relieved from VAT - but without the same risk of affecting the recovery of VAT on expenditure.

What is covered by the Brief?

HMRC say that it covers Authorities' provision of in-house leisure services to members of the public. Our interpretation of the Brief is that non-business treatment applies to:

- Charges for the casual use of Authorities' sports facilities – within leisure centres, schools, or elsewhere.
- Bookings of such facilities, where the criteria for the existing series of lets or continuous let VAT exemptions aren't met.

Where the above supplies are made by a third party acting as the agent of an Authority, we consider that non-business treatment applies to charges made to the public. However, it would not apply to charges made by third parties acting as principal. Care should be taken to determine the structure in place.

The Brief also excludes:

- Lettings of sports facilities which meet the criteria for a series of lets or a continuous let, or any non-sporting lets. These remain exempt from VAT unless the option to tax has been exercised by the Authority.
- Charges for classes/tuition provided by the Authority. These remain exempt from VAT.
- Catering/vending, and other supplies of goods. These remain business activities, mainly subject to VAT, although some charges for cold takeaway food may be eligible for zero rating.
- Car parking. Any charges for off-street parking remain subject to VAT.

HMRC published updated guidance on 15 November 2023 accepting non-business treatment applies to:

- memberships;
- facility visits;
- lettings of sports facilities;
- lettings of non-sports facilities for sports, such as a community centre in some cases;
- leases of local authority-run sports facilities;
- letting local authority recreation grounds for sports events; and
- sports tuition and education.

Action to be taken by Authorities

Authorities no longer need to charge VAT on supplies covered by the Brief. When they stop, there is no requirement to reduce the prices charged to customers.

The consequences of the revised VAT treatment should be considered as part of any future evaluation over whether to outsource or insource leisure services. In-house operation is now likely to be more VAT-efficient than outsourced, as Authorities' will largely be able to make the same supplies "VAT-free" as Trusts can, but with the benefit of VAT recovery on expenditure. However, HMRC's Brief still leaves income sources as VAT-exempt (so some impact on Partial Exemption calculations).

This note is intended to be a general guide to the changes and does not constitute VAT advice. Arrangements for the provision of leisure services can vary considerably.

Source: PS TAX