

15 June 1995

Your Ref:

To: Director of Finance
Regions, Districts & Islands

Our Ref: F/6 - T/LT

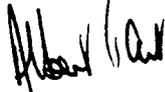
Chief Executives of New Councils

Dear Colleague

VALUE ADDED TAX - RE-ORGANISATION OF LOCAL GOVERNMENT

I attach for your information a copy of a letter from HM Customs summarising the current position regarding the VAT status of shadow local authorities. No doubt you will wish to have regard to the various comments set out within the attached letter. I would, however, draw to your attention the fact that the Scottish Office are proceeding to lay amending Regulations which will permit the shadow authorities in Scotland to recover VAT as was the original intention when the legislation was enacted. If there are any matters contained within the attached copy letter which you wish to draw to my attention please do so as soon as possible.

Yours sincerely



Albert V Tait
Depute Secretary

Enc

WHEN CALLING PLEASE ASK FOR: Albert V Tait



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Our Ref: VA30/3032/95

Your Ref: ADJ/CJA/CJT

6 June 1995

Dear Colin

LOCAL GOVERNMENT REORGANISATIONS - SHADOW COUNCILS

Thank you for your letter of 12 May 1995 concerning the recovery of VAT by shadow authorities.

In order to be able to recover VAT under section 33 the shadow authorities must be of a definition within section 96(4) of the VAT Act 1994. The Welsh and Scottish legislation may not have fully obtained this position for the Councils although this must have been the intention and will I am sure be achieved.

WALES

The Welsh Reorganisation Act partially achieved the objective of getting the shadow authorities within section 96(4) in that the County Councils are "Councils of a County". However County Borough Councils were not within section 96(4) VAT Act 1994 and it has become necessary to for the Secretary of State for Wales to lay and Order to amend that section. This Order is currently in draft and should be laid shortly.

SCOTLAND

A similar problem appears to have been created in Scotland where the provisions of section 96(4) require a council to be within the meaning of the Local Government (Scotland) Act 1973. My discussions with the Scottish office so far lead me to think that the Scottish shadow authorities are not within that description. My colleagues in the Scottish office are considering the position.

ENGLAND

The position has not yet been clarified for the English shadow councils but I will let you know any more details later.

VAT4B is responsible for VAT in Government Departments, Health Authorities and Trusts and
Local Government

VAT IN THE TRANSITIONAL PERIOD

As mentioned above the intention was always that the shadow authorities should be able to recover the VAT they incur in setting up the new councils. Hopefully this can be done by the inclusion of the shadow authorities within the terms of section 33 of the VAT Act 1994. In the event that this should not happen then the course I would expect them to follow would be, as you suggest, that the existing council should recover the tax through its section 33 reclaim procedure. We would not view the adjustment of any funding as a consideration for a supply to the new authority. This procedure may be followed if the amendment to the VAT Act is too late to cover some of the early expenditure by the shadow authorities.

VAT TREATMENT OF THE TRANSFER

I can confirm that the actual transfer of assets will be considered to be a non-business transfer as it is made under a statutory obligation, it will therefore be outside the scope of VAT. Similarly transfers of assets to the residuary bodies will be non-business for the same reasons. However the status of the residuary bodies is less clear and we do not expect them to be given section 33 status.

PROPERTY ISSUES

Our first impression was that options to tax and developers self supplies would lapse on the reorganisation day when the transfers were made. However legal opinion is being sought to clarify this point as it would appear from certain parts of the legislation that it was the intention that some of these types of obligations should survive the reorganisation (see section 53(4) of the Local Government (Wales) Act 1994 for example). This could be a benefit in that we would not need a re-notification of options to tax but it would remove the obvious benefits the councils could obtain by making a fresh option.

The same position exists for the developers self supply requirement in March 1997 and bad debt relief claims. I will hopefully be able to clarify these for you shortly when we have the benefit of advice that is being sought.

RETENTION OF RECORDS

There will clearly be a variety of scenarios encountered with the unitary councils taking over the areas of many others. This is going to be a difficult issue and one on which I doubt I can give anything but the most general guidance. Whoever will be responsible for closing the accounts of the old authority will have a liability to present the records for Customs and Excise until they are finalised. Thereafter I would say that the new authority must take on responsibility for the retention of the records. Exactly what should be kept must be a matter for the local office and I think the new authorities should agree the requirements locally.

PURCHASE INVOICES

I can confirm that the new councils will be able to recover VAT on invoices addressed to the old council subject to the normal requirements.

I am sorry that I was not able to reply to your letter before the CIPFA meeting and also that many of the points are still unclear, I will however keep you informed as the various points become clarified.

Copies of this letter are going to John Stubbins and Jim Ratty.

Yours sincerely

A handwritten signature in cursive script that reads "John Gates". The signature is written in black ink and is positioned below the typed name.

JOHN GATES