

Supporting People & VAT: A Joint Briefing

1. Introduction

Key points to note

1.1 The Office of the Deputy Prime Minister (ODPM – formerly DTLR) and Customs and Excise have now agreed a joint statement on the applicability of Value Added Tax (VAT) to services funded under the *Supporting People* programme. The statement forms part of chapter one of the Interim Financial Package issued by the ODPM in June 2002. It seeks to clarify the position of VAT in respect of services delivered under Supporting People. This joint briefing from National Housing Federation (the Federation) and SITRA will explain the technical language of the statement in plain English. A number of examples are included.

1.3 This is an introductory briefing intended for support practitioners in RSL directly managed, agency managed and local authority managed accommodation.

1.4 It is not a full technical guide to VAT. In cases of doubt, readers are advised to consult their tax advisors.

2. Principles of VAT

2.1 An activity funded under *Supporting People* may attract VAT depending on the following factors:

- (a) The purpose of the services provided, and the needs of the client group
- (b) The status of the provider organisation
- (c) Whether support services are provided as a separate service, or as the main part of a 'package' of services.

2.1(c) For example, in an agency managed scheme for the homelessness where the agency is providing both housing management and support services

3. Which Services Are Exempt From VAT?

3.1 When supplied on their own, the following services are exempt from VAT: –

(a) Residential accommodation in premises other than a hotel, inn, boarding house or similar establishment

(b) Support that consists of welfare services (see 4. below) provided by a :

- i Charity registered with the Charity Commission
- ii Registered societies established for charitable purposes within the meaning of the Industrial and Provident Societies Act 1965
- iii any registered society or branch established for charitable purposes within the meaning of the Friendly Societies Act 1974
- iv Organisations recognised as charitable by the Inland Revenue
- v A public body (such as a local authority)
- vi A state regulated private welfare institution (an establishment that provides care, which is registered with and regulated by the National Care Standards Commission or similar body)

3.1 (a) This means that basic or mainstream housing management carried out by a landlord is VAT exempt. N.B. Managing agents do not provide ‘residential accommodation’ – they carry out functions on behalf of landlords. So housing services provided on an agency basis do not qualify for VAT exemption on these grounds – though they may qualify on other grounds (see section 5 and examples below)

3.1 (b) note this wordage implies the possibility of support which does not constitute ‘welfare services. There is not an exact overlap between ODPM’s definition of support and Custom & Excise’s definition of ‘welfare services’.

3.1 (b) Companies limited by guarantee with charitable objectives are not necessarily charities. A separate registration with Charity Commission or as an I&P or Friendly society with charitable rules would be necessary to pass this test. This may be a problem for some providers. The Federation is writing to members to find out how this may affect them and will then highlight their concerns to C&E and the ODPM.

3.1 (b) vi Registered Social Landlords are not state regulated bodies even though they are regulated by the Housing Corporation. However, the vast majority of Federation members are also registered as charities, I&P Societies or Friendly Societies so will gain VAT exemption via that route.

3.2 If any provider organisation falls outside the above definitions of status, it will not qualify for VAT exemption. A standard rate charge of 17.5% will have to be added to the invoice to the Supporting People Commissioner if the value of the contract takes the provider above the VAT threshold. VAT on such SP contracts is reclaimable by the Administering Authority (see section 6 below). But this is only one half of what is, in effect, a double test for VAT exemption - the second half of the test relates to the nature of the support service provided.

3.2 At a first glance, this would seem to mean that almost all private sector 'support only' providers will need to charge VAT. However, in practice, most private sector providers provide support alongside housing services where they are also the direct landlord e.g. sheltered housing, or Adult Placement schemes. Different rules apply here (see section 5 below) and it would seem most are likely to achieve exempt status via this route.

4. What is a Welfare Service?

4.1 For the purposes of VAT exemption, Customs & Excise define welfare services as :

- (a) care, treatment or instruction that are designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons; or
- (b) the care or protection of children and young persons

4.1. (a) Note that Customs use of the word 'care' is much broader than that employed by other bodies, such as the Housing Corporation, Housing Benefit or the National Care Standards Commission.

4.2 Customs and Excise believe it is impossible to provide a definitive list of support services that will be VAT exempt in all circumstances, but they have agreed the following list as examples of welfare services 'potentially' (their cautious word) eligible for VAT exemption, where provided by a body falling into one or other of the constitutional types defined above:

- (a) training on welfare related matters
- (b) support or instruction designed to develop or sustain a person's capacity to live independently in the community
- (c) protection, control, guidance or companionship required to meet an individual's personal or domestic needs
- (d) general assistance with everyday tasks - including home help services and assistance with routine administration
- (e) housing resettlement support provided after an

4.2 (d) See Customs Information Sheet 6/99, available on the Customs web site, for further information on this point

individual leaves a refuge or institutional care

- (f) assistance with management of behavioural problems

4.3 This is a particularly helpful list – especially the point on ‘support...designed to...develop or sustain ...[living]..independently.’ this is more or less the basic purpose of *Supporting People*, so there is a prima facie argument that any that any SP funded activity should therefore count as a ‘welfare’ service for VAT purposes - and hence is exempt if delivered by a body with an appropriate constitutional status.

5. Supplies consisting of more than one element

5.1 This describes situations where support is being provided alongside other services – most commonly housing. ODPM and C&E recognise that even if such services are separately commissioned – for instance, if a managing agent is commissioned by the landlord to provide housing services and by the Administering Authority to provide support – they can, in certain circumstances, still constitute a ‘single supply’.

5.2 There is a substantial technical literature on how to judge whether two or more services constitute a ‘single supply’

5.3 A single supply exists where one or more elements of the service are regarded as the principal service and the other (s) are ancillary. A service is ancillary if it does not constitute an aim in itself for customers, but a means of enjoying better the principal service. Supported housing or support services of various sorts may be construed as being a ‘single supply’ – but which of the constituent elements of that single supply is the principal and which the ancillary service can assume critical importance in terms of whether the service overall is ‘VATable’.

5.4 The charging of a single price for the services is not decisive nor is whether the funding comes from one or more sources. If customers are seen to be purchasing two distinct services then, it will not constitute a single supply.

5.2 *Business Briefs 02/01 and 03/02 on the Customs web site at www.hmce.gov.uk are the most relevant starting points for people seeking further clarification.*

5.3 *In this context, ‘customer’ should be taken as being the end user. ‘Support’ is likely to be the predominant service in most supported housing and/or support services and therefore the whole service will be VAT exempt. However, there will be other instances in which housing is deemed the predominant supply. This is examined in further in the examples below.*

6.1 (a) *A temporary stay scheme with an extremely low level of staffing input might qualify under this clause*

6. What if I want to charge VAT?

6.1 A number of support providers and/or supported housing services are registered for VAT and already charge it on certain activities. This can have financial advantages for the provider in certain circumstances. This will still be possible. Unless supplied as an ancillary element of an exempt single supply, the following activities are subject to VAT at 17.5%:

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| (a) residential accommodation offered in a hotel, inn, boarding house or similar establishment | <i>6.1(b) Any agency arrangement providing housing management services only and not support would qualify</i> |
| (b) housing management services | <i>6.1(c) There may be a question about the educational or training related support offered in Foyers. Legal advice should be taken</i> |
| (c) support services that fall outside the definition of welfare services given above. | <i>6.1(d) Customs intend to introduce a VAT concession for certain commercial homecare providers. Details have yet to emerge</i> |
| (d) support services provided by an organisation that fails to meet the constitutional test outlined above. | |

7. Local Authorities, Supporting People Contracts and VAT

7.1 ODPM will not cover the cost of any VAT incurred through the *Supporting People* programme, and accordingly will be paying grant to Local Authorities net of VAT

7.2 The direct provision of support services by local authorities will be treated as non-business activities for VAT purposes. These are outside the scope of VAT. However, local authorities will be able to

7.2 Section 33 of the VAT refund scheme allows local authorities to get a refund of irrecoverable VAT when carrying out statutory non-business duties. The entry criteria to this scheme are strictly enforced .

reclaim the VAT they incur in supplying *Supporting People* services under Section 33 of the VAT Act 1994.

7.3 Where a local authority commissions a third party to deliver *Supporting People* services, they can also recover any VAT charged on the contract. VAT can not be charged on any exempt supplies as defined above

7.3 Unless the provider charges VAT on the contract, the local authority cannot recoup any VAT

Examples

Example one:

Anytown Mental Health Project (AMHP) manages a 10 bed shared housing scheme for Anyarea Housing Trust, an RSL. From a VAT point of view, it is supplying housing management services to the RSL – an activity that would normally attract VAT.

AMHP also holds a support contract from the local Administering Authority. It is a registered charity and argues that the work this support contract pays for can be described as being '*assistance with management of behavioural problems*'. It therefore qualifies for VAT exemption given it is a charity delivering welfare services as outlined above.

AMHP hold that the principal service they are delivering is support – there would be no reason for the RSL to sub -contract housing functions to them unless they were providing this support service. Indeed, the revised Management Agreement between AMHP and AHT which comes into effect in April 2003 specifically says that the housing management services is sub-contracted because of the agency's support role under *Supporting People*. The customers - the tenants of the scheme - need to live in property managed by AMHP if they are to gain maximum benefit from the support service. So the housing service is ancillary to the main purpose of the scheme.

Because the housing service AMHP provides to the RSL is ancillary to the principal support service, the whole service is VAT exempt.

Example two

Seaside Housing Association (SHA) is a company limited by guarantee and a non-charitable RSL, not registered as an Industrial and Provident or Friendly Society. It owns and runs a block of sheltered housing for the elderly. A peripatetic warden service is provided.

As of April 2003, the support costs associated with this warden service will be transferred to *Supporting People*. Most of the costs will be covered by a block subsidy grant from the Administering Authority, but around 25% will have to be recouped from those tenants who do not claim HB. As SHA does not pass the part of the VAT exemption tests relating to constitutional status, it would normally have to charge VAT both on its support contract with the Administering Authority and on the support charges it levied on tenants not receiving HB.

However, SHA is the landlord, and the provision of “*Residential accommodation in premises other than a hotel, inn, boarding house or similar establishment*” is definitely VAT exempt.

SHA argue that this housing service is the principal supply – and the prime reason for employing a warden is to “...*sustain a person’s capacity to live independently in the community*”. In this context, therefore, it is support that is the ancillary service. Because the principal service is VAT exempt, so is the support provided as part of the single supply.