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Memo

Subject CIPFA submission - theatre hire

To Maria Menezes

From Graham Spencer

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Dear Maria

Thank you for your submission about the VAT treatment of the hire of a theatre and associated services.

The Issue

The issue is about the liability of the hire of a local authority theatre to third parties when the local authority also provides services such as lighting technicians, box office etc. The question is whether the whole supply falls under the exemption for land where there has been no option to tax, particularly when the HMRC guidance where para 3.4 of Notice 742 indicates that a supply of a 'whole' theatre will be exempt, but VATLP18000 states that where other services are provided then the whole supply is taxable.

HMRC's view

As always, there is no one simple answer to this issue and the VAT treatment will depend on the exact circumstances of the transaction.

In general terms, where land or property is hired, there can only be an exempt supply of land where there is a passive transfer of a right to use it as if the hirer owned it. Therefore you must look at what it is that the parties agree between themselves and what it is that the hirer wants supplied - a use of facilities or an interest in land? Section 2.5 of Notice 742 sets this

out, in particular the penultimate paragraph which states 'Where a licence to occupy is granted together with other goods and services as part of a single supply, the nature of the overarching supply will determine how it should be categorised for VAT purposes'.

If the supply is simply to be an interest in land then it must be capable of meeting the conditions as set out by various ECJ cases as well as those of the UK courts. One of the questions that need to be considered is whether the local authority is really giving up its interest in the land meaning the hirer can act as though he was the owner – this is to what para 3.4 of Notice 742 is referring. Also, whether the local authority is taking a passive role and does not provide any other service with the grant of the interest.

Some of these points have been covered in a recent Tribunal decision "*Willant Trust Ltd - TC/2013/01454*". HMRC's view is that if various services and facilities are to be provided alongside the interest in land it would be difficult for a local authority to argue that it is undertaking a passive activity in simply supplying an interest in land. As a result it is likely that in the majority of cases what is being supplied is a single taxable supply of theatrical facilities rather than an exempt interest in land because the nature of the supply is not just that of the land itself which means it can never be exempt.

Considering this, it is not a question of an exempt supply of land with "x" number of extras being provided before the supply becomes taxable. Rather the approach to take is addressing the overriding question of whether there is a supply of a passive interest in land. The question of whether there exists a single supply or multiple supplies will depend on the facts of each case and guidance on this area in relation to land is provided in VATLP06140, but HMRC believes that there is likely to be a single supply when the theatre is hired with other services because they are so closely connected and to separate out the other services would be artificial.

Although the exact circumstances around each let must be examined in order to determine the VAT treatment, as explained above HMRC believes the majority of these cases will not be a passive supply when other services are provided and so it cannot be an exempt supply of land because the customer wants the right to use the theatrical facilities rather than only acquire an interest in land as an owner.

Yours sincerely

Graham Spencer