

**PROPERTY VAT Liaison Group  
Notification of Policy Query to HMRC**

Subject	<b>Licence to occupy or supply of facilities</b>
Author(s)	<b>Karen Regan (CIPFA)</b>

<b>Who is affected</b>
All taxable businesses that hire out premises with ancillary services and have not opted to tax those premises.
<b>Description of the issue</b> (include type of goods or services supplied and who is making and receiving payment)
CIPFA has sought clarification from HMRC on the degree of additional ancillary services required to convert a licence to occupy theatre premises (exempt) into a standard rate supply of facilities.  The response from HMRC (see attached letter) 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."  CIPFA have accepted HMRC's position on theatre hire, that this is a standard rate supply of facilities. It is hoped to agree a transitional period for LAs with theatres, since a number of local authorities are facing assessments for output tax due on theatre hire, as HMRC consider that there is no change of policy.
<b>The problem</b>
The taxpayer when self assessing the VAT treatment of the leasing or letting of premises is now faced with uncertainty as to the correct VAT liability. Historically HMRC have allowed exemption to apply where an element of occupation exists.  There is a need for a proper policy review by HMRC to provide clarity and certainty to allow the taxpayer to be in a position to make decisions on the VAT liability of these transactions.
<b>Impact and Extent of the Issue</b>
The response from HMRC has wider relevance than just theatre hire as it indicates a change of approach by HMRC and a move towards a narrower interpretation of when a licence to occupy can be treated as VAT exempt. This reflects recent judgements in both UK and EU law but is not reflected in HMRC's guidance.  There are numerous other areas - and of wider relevance than just LAs - where it can be unclear whether what is supplied is a passive right to occupy land or use of the facilities offered by that land, eg teaching and training facilities, wedding venues, storage facilities, exhibitions and market stalls, etc, not to mention the question when a 'room' becomes a theatrical, sports or teaching and training facility, eg a school hall with stage, lighting, sound systems, etc hired for theatrical purposes.
<b>The law</b>
Group 1, schedule 9, VATA 1994.

### **Current VAT treatment**

In relation to theatre hire by local authorities, of those who responded to a request for information, it would appear there is no consistent treatment applied.

It is evident that, nationally, depending on their own specific circumstances and documentation issued, the VAT treatment ranges from wholly exempt to a mixed supply of exempt hire and standard-rated additional services.

There is currently no evidence of any local authority treating such supplies as a single taxable supply, nor has HMRC historically sought to challenge the liability currently applied by LAs.

Note: No data has been collected for theatres not operated by local authorities.

### **References in HMRC publications, including websites if any**

1. Notice 742 Land and Property, paragraph 3.4

*If you let an entire theatre, concert hall or other place of entertainment your supply is normally exempt, unless you have opted to tax.*

2. VATLP18000 – Accommodation at a Sports Ground or other Place of Entertainment.

*The letting of a whole theatre, concert hall, arena or other place of entertainment is normally exempt. However, where other services are being provided, such as box office, or assistance in staging an event, the supply is taxable.*

3. VATLP11800 – Hotels and Similar Establishments.

Wedding packages treated as standard rate with conference hire treated as a mixed supply.

4. VTAXPER78000 – Particular Trades: Theatre Production and Management Companies

*Cases under either of the following headings will have to be considered in the light of the specific circumstances and contracts:*

- *arrangements where a management company provides all the necessary facilities for a production company or another body such as local operatic society but takes no further part in the venture (i.e. the management company effectively hires out the theatre) when there may be an exempt supply under Group 1 of Schedule 9; or*

- *other places of entertainment such as concert halls, stadia, etc.*

### **Tax analysis**

Recent UK and ECJ case law places emphasis on the "passive" letting of land with the right to occupy land as if the owner. HMRC have taken this to mean that theatrical facilities cannot meet these requirements and therefore, must be a taxable supply of facilities. (Willant Tust Ltd being cited in their response.)

This appears to represent a change of policy by HMRC as there are numerous examples where HMRC do allow exemption to apply, even where other services are included in the letting, or otherwise treat the supply as a mixed supply.

For example, conference hire (mixed supply), market stalls (exempt) and exhibition stands (standard rate.)

<b>References in tax legislation supporting change</b>
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N/A
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<b>Other supporting evidence</b>
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Date
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<b>12 May 2015</b>
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