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**Date** 14 February 2018  
**Our Ref**  
**Your Ref**

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## **Memo**

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**Subject** Markets – liability of on-street market pitches

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**To** Mike Revis/Mark Jenkins

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**From** Marie Campbell

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**Copy** David Ogilvie

### **Type of authority affected**

Any local authority renting market pitches to stall holders.

(To be clear we are not discussing the issuing of licences or permits to be a street trader. This paper concerns the rental of a physical space.)

The subject has been brought to our attention because of the guidance on TIS online - please see below.

### **Description of the issue**

HMRC would like to know how local authorities are treating the rental of market stall pitches on

- (a) a thoroughfare which is closed to traffic for the purposes of a market
- (b) a thoroughfare which is not closed to traffic for the purposes of a market.

We would also like to know:

Does the committee feel that on-street markets are operated under a special legal regime? If so, what is that special legal regime?

Is this why is listed as OTS of VAT in the guidance on TIS online?

What are the differences between an on-street and an off-street market? Web searches suggest the distinction is normally between an indoor and an outdoor market.

How would you define a street market e.g. what about a public square or similar?

What types of on-street markets are there?

### **Impact and extent of the issue**

Unknown.

## **Previous Discussions**

Markets were discussed at some length at the CIPFA VAT committee in 2007-8. These conversations were on whether the Food Act 1984 or ancient charters created a special legal regime. HMRC rejected this argument following legal advice. The subject of on-street and off-street markets was not considered.

## **References in HMRC publications,**

VATGPB8770 Charter Markets copy also enclosed below.

VAT Notice 742: Land and Property copy also enclosed below.

Notice 749 from 1972 to 1999 listed the most commonly made supplies by local authorities. At no point did it show on-street markets as non-business.

Tax analysis

The key decision in this area was made by the (now) FTT in the case of Tameside Metropolitan Council ([1979] VATTR 93), which held that the grant of a pitch for a market stall is exempt from VAT (a licence to occupy land), notwithstanding the short duration of the licences. This is, of course, subject to an option to tax the land. That decision made no distinction between indoor and outdoor markets, and it did not suggest that street markets are a class apart for VAT purposes.

As stated above, it has not so far been established that markets are operated under a special legal regime within the context of s 41A VAT Act 1994. Medieval Royal charters are not regarded as giving rise to a special legal regime – they were awarded to local aldermen by the Monarch, giving them the exclusive right to hold markets at a time when this activity often fell within the Royal prerogative (all land being the property of the Crown).

## **Annex A – extracts from HMRC Guidance and TIS online**

1. VATGPB guidance
2. VAT Notice 742 Land and Property
3. TIS online

### **1. VATGPB8770 Charter Markets**

Other local authority activities: miscellaneous (F to M): markets

#### Charter markets

Some local authorities operate markets established under Royal Charter often dating back to the Middle Ages. These charters often forbid any other person holding a similar market within the confines of a particular town or within a certain distance, often six and two thirds miles.

It is sometimes claimed that they are acting under a special legal regime. However, close examination of these Charters and private Acts of Parliament applying to the predecessor bodies of the local authorities, often reveals that the Charter is of no more than of historic interest.

In particular many local authorities from the mid-nineteenth century onwards took the opportunity to incorporate their market operations in statute. These statutes, invariably private Acts made at the specific request of the local authority concerned, often include reference to the Markets and Fairs Clauses Act 1847 and adopt many of the powers set out by that Act.

Significantly the role of the Act is to consolidate the legislation which applies to markets and fairs created under Local Acts Its main purpose being to create uniformity and simplify procedures. For example, the 1847 Act grants the operators of markets the right to set byelaws, places certain legal requirements upon them about the provision of weights and

measures and requires them to clearly display their fees. As the Act applies equally to both the private sector and local authorities, it does not constitute a special legal regime. The provision of a market by a local authority is therefore a business activity.

#### Rent from stalls and pitches

The letting out of market pitches, shop units and the like is normally exempt from VAT, subject to any election to waive exemption.

#### Licensing other markets

Local authorities are responsible for issuing licenses to regulate other market operators within their local jurisdiction. The licences ensure that markets are operated within agreed guidelines. They can cover things such as the type and number of pitches, operating hours, market days. Only local authorities can issue market licenses so this is a non-business activity and falls outside of the scope of VAT.

## **2. VAT Notice 742 : Land and Property**

### 2.6 Examples of supplies that are licences to occupy land

The following are examples of licences to occupy land. This list is not exhaustive:

- the provision of a specific area of office accommodation, such as a bay, room or floor, together with the right to use shared areas such as reception, lifts, restaurant, rest rooms, leisure facilities and so on
- the provision of a serviced office but only where the use of phones, computer systems, photocopiers etc. is incidental to the provision of office space
- granting a concession to operate a shop within a shop, where the concessionaire is granted a defined area from which to sell their goods or services
- granting space to erect advertising hoardings
- granting space to place a fixed kiosk on a specified site, such as a newspaper kiosk or flower stand at a railway station
- hiring out a hall or other accommodation for meetings or parties and so on (but not wedding or party facilities where the supplier does more than supplying accommodation, for example by assisting with entertainment and arranging catering). The use of a kitchen area, lighting and furniture can be included.
- granting a catering concession, where the caterer is granted a licence to occupy a specific kitchen and restaurant area, even if the grant includes use of kitchen or catering equipment
- granting traders a pitch in a market or at a car boot sale, or
- granting a specific space for the installation of a 'hole in the wall' cash machine (ATM)

## **3. Currently TIS online has the following entries**

Land & Property – General – Letting of market pitches – on street non-business OS

Land & Property – General – Letting of market pitches – off street business EX