**Land & Property Liaison Group (VAT) meeting – 21st January 2020, held at 10 South Colonnade, E14 4PU.**

**This document is purely intended to reflect the discussions that took place at this meeting. Any comments made by HMRC (in particular if they relate to a potential/likely change of HMRC policy) do not constitute HMRC policy or practice unless and until they are supported by published material (for example HMRC Notices, Revenue & Custom Briefs (RCBs) or Manuals)**

**Introductions/Housekeeping**

It was agreed that future LPLG meeting minutes would include a list of attendees and the organisations they represented, as happens with the minutes of the Joint VAT Consultative Committee. A list of attendees is set out in Appendix A.

**Matters arising from previous meeting (17th May 2019)**

1. *Authorised signatories – OTT notification:* Following the previous meeting, HMRC had set out its position regarding the application of the relevant associate rules in the context of OTT notifications. Further clarification had been sought on this in advance of this meeting, in particular whether HMRC would accept as valid an option exercised by one member of a VAT group, such as the representative member, and notified by an authorised signatory of that member, in respect of property owned by any other member of the VAT group.
2. It was noted that if this were the case, there would be an operational benefit to HMRC’s OTT unit, which currently expends considerable resource in maintaining records of the relationships between OTTs made by different members of a VAT group.

**ACTION POINT 1 - HMRC to respond in writing to the further clarification sought on this matter by end of February 2020.**

**ACTION POINT 2 - HMRC to consider amending the words ‘Director or company secretary of the group member that owns the property’ in the list of authorised signatories in Notice 742A para 7.6 to ‘Director or company secretary of the group member that is exercising the option’**

1. *VAT on remedial works to cladding*: Referring to discussion at the last LPLG meeting, HMRC confirmed that ‘person constructing’ status is transferred in the context of statutory transfers of assets between local authorities. HMRC referred to RCB 27/14.

**ACTION POINT 2: HMRC to circulate to LPLG email response provided to CIPFA representative on this point.**

1. *Impact of Mydibel on CGS adjustments*: At the previous meeting HMRC had indicated that it was considering its position as regards the impact of the CJEU *Mydibel* decision. By way of update, HMRC noted that:

*“In respect of the CJEU decision Mydibel SA, which looked at a sale and leaseback of a building, the sale and leaseback having been entered into simply to ‘raise capital’. The court decided that the particular circumstances of the transaction in that case, did not require an adjustment for the purposes of the Capital Goods Scheme. Deductions and Financial services VAT Policy team have considered the decision and the present rules for adjustment in respect of the sale of a capital item in accordance with regulation 115 of the VAT regulations 1995, continue to apply”*

1. In subsequent discussion greater clarity was sought on HMRC’s position and whether HMRC were in effect disregarding the *Mydibel* decision or whether HMRC only considered the decision to apply in cases where the facts and circumstances very closely accorded with those in *Mydibel*.

**ACTION POINT 3: HMRC to circulate in writing the update on *Mydibel* provided at this meeting [since completed – see wording in italics above]**

**ACTION POINT 4: NHF representative to reformulate request for clarity on HMRC’s position, including illustrative examples.**

1. *Forfeit deposits –* HMRC had circulated its written response to a BPF query on this matter and it was agreed as closed.
2. *Melbourne* – HMRC had circulated this decision, as agreed.

**Template query – construction and DIY claims (timing of submission)**

1. In response to a query raised by the ICAEW, HMRC confirmed that the production of a completion certificate is only one of several pieces of evidence that should be taken into account in determining whether a DIY dwelling had been completed and was ready for occupation. HMRC cited case law that supported this position. They did not agree with the decisions in *Farquharson* nor, to the extent that it concerned this issue, *Swales*.
2. LPLG members noted that the completion certificate was an objective measure and as such easy for taxpayers to understand. HMRC were aware that this was an area where uncertainty may exist for taxpayers and policy and operational teams were working closely to explore how the DIY claim process could be made more efficient. HMRC added that the purpose of the DIY scheme was to support VAT parity between those building their own houses and those who build houses as a trade.
3. In addition, HMRC were taking a sympathetic approach towards “reasonable excuses” provided by taxpayers who submitted DIY claim forms outside of the filing window. HMRC were also reviewing cases that had been put forward for litigation on this basis, with the aim of withdrawing them where taxpayers had provided a reasonable excuse.
4. HMRC were also exploring whether the relevant Regulations could be amended so as to deal with some of the problems and were soon to publish a new version of the DIY claim form.

**ACTION POINT 5: HMRC to circulate draft of new DIY claim form for LPLG feedback prior to publication.**

**Template query – paragraph 4.3 of Notice 708**

1. In response to a query from the BPF, HMRC agreed that the guidance on input tax at paragraph 4.3 of Notice 708 was unclear and that it would be changed.

**ACTION POINT 6: HMRC to circulate written response to BPF template query**

**ACTION POINT 7: HMRC to amend paragraph 4.3 of Notice 708 to provide a fuller explanation on input tax recovery**

**Template query – assignment of call options**

1. In response to a query from the BPF regarding the VAT treatment of the assignment of call options, HMRC noted that the guidance in paragraph 7.4 of Notice 742 remained applicable and applied to assignments as well as grants. However, HMRC was currently in litigation on this point and could therefore not provide any substantive response to the BPF’s query. HMRC was unable to indicate whether, in the particular litigation, it was arguing for taxation or exemption.
2. It was noted that the VAT registration team and OTT unit often have to consider whether supplies are taxable, including, on a regular basis, the assignment of call options. Further guidance in this area would therefore be welcome.

**ACTION POINT 8 – LPLG members to provide HMRC with any relevant examples.**

**Any other business**

1. It was noted that the Supreme Court was yet to decide whether it would allow an appeal in the case of *Fortyseven Park Street*.
2. The revised version of Notice 742 that had previously been circulated to the LPLG would not now been published, but work on the Notice was now resuming. LPLG members suggested that Notice 708 needed to be reviewed and updated to address a number of technical points, and issues with structure and cross-referencing.
3. LPLG members reported that the tone of letters sent by HMRC to taxpayers when they sought to de-register having previously made an OTT, or request a VAT reclaim, was often perceived as aggressive and threatening by taxpayers. For instance, letters did not mention that there may be no VAT liability upon deregistration and focused very heavily on the potential for penalties if a VAT reclaim request was incorrectly made. HMRC agreed to review these.

**ACTION POINT 9: LPLG members to send HMRC examples of communication perceived as aggressive and provide feedback on how these could be improved.**

1. In response to a query from CIOT, HMRC reported that there were no plans to re-issue specific guidance on VAT issues frequently encountered by the social housing sector, although HMRC could reconsider this if there were strong demand from the sector.
2. The LPLG considered how the “golden brick” rules might apply in the context of dwellings built using modern methods of construction, such as modular building. It was felt that the point at which it could be determined that there was a residential building under construction would depend on the facts and circumstances of each case, but that the same basic principles would apply as for dwellings built using traditional building techniques.
3. HMRC indicated that, whilst ‘person constructing’ status generally required the building to have progressed beyond foundation stage, it might, in individual cases, be enough that there was substantial infrastructure in place.
4. HMRC confirmed that, in a development which included commercial elements as well as dwellings, ‘person constructing’ status did not require the dwellings to be under construction, but only the building. The BPF’s VAT Committee was planning a visit to a modular housing factory later in the year and would extend the invitation to interested HMRC officials (a list of names to be submitted in advance, for scrutiny).

**Date of next meeting:**

* The next meeting will take place on Tuesday 19 May 2020 at a time to be confirmed (though LPLG members expressed a preference for the afternoon).

**Appendix A – list of meeting attendees**

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| **Attendees** |  |
| Ben Tennant | National Housing Federation |
| Colin Smith | British Property Federation |
| Dan Smith | Chartered Institute of Housing |
| Hugh Mitchell | Association of Tax Technicians |
| Ion Fletcher | British Property Federation |
| John Voyez | Chartered Institute of Taxation |
| Julie Towers | Institute of Chartered Accountants in England & Wales |
| Karen Regan | Chartered Institute of Public Finance & Accountancy |
| Martin Scammell | British Property Federation |
| Robert Plumbly | VAT Practitioners Group |
| Ronnie Brown | Law Society of Scotland |

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| **HMRC** |  |
| David Millar |  |
| James Ormanczyk |  |
| Keith Miller |  |
| Lisa Allen |  |
| Melanie Williams |  |
| Phil Askew |  |
| Rosie Brown |  |
| Tracey Davies |  |