

**Customs and Indirect Tax  
Directorate**

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**Our ref** CIPFA/March 2019  
**Your ref**

**Internet** [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Dear Ian,

**Re: VAT RECOVERY UNDER SECTION 33 WHERE A LOCAL AUTHORITY ACTS AS SOLE  
MANAGING TRUSTEE**

Thank you for your recent letter. I thought it would be helpful to reply ahead of the VAT Committee meeting on 6<sup>th</sup> March so that we can narrow down the points for further discussion. I will adopt your paragraph headings.

***1. What is meant by the local authority must be acting as sole managing trustee?***

ACRE's Information Sheet states that the local authority corporately must act as sole managing trustee, and there is no disagreement about that. The question is whether this includes the mayor or chair of the local authority (or a senior officer). We agree with your views, which concur with those of the Charity Commission. If the mayor or officer is acting on behalf of the local authority – for example, the mayor or chief executive of a named authority – then the authority is acting as sole managing trustee. This would not be so, however, if the named individual is acting in their own capacity.

***2. What is meant by the activities of the trust 'must be so closely related' to the local authority's functions as to be indistinguishable?***

Given the very wide-ranging remit of local authorities, we accept that anything done by a local authority as sole managing trustee is closely related to the authority's functions and thus indistinguishable from them. If you can think of a more elegant description, we would be happy to consider it.

***3. Does the condition that the trust's activities must be non-business mean that VAT recovery is only afforded the sole managing trustee local authority under Section 33(1), with the consequence that exempt-attributable VAT incurred by the trust remains irrecoverable (Section 33(2) not applying to the sole managing trustee local authority in that context even if de-minimis)?***

The issue here is where the local authority is the sole managing trustee of a community facility, such as a village hall, from which supplies are made which are exempt from VAT – for example, lettings. We accept that section 33(2) VATA applies to all the activities of a local authority, including those in its capacity as sole managing trustee.

### ***Unresolved issues in respect of questions 2 and 3***

The nub of the unresolved issues is that the local authority and the trust of which it is sole managing trustee will have separate accounts, although they may be consolidated, from which goods or services are purchased.

We will need to discuss this further with the VAT Committee. A key principle underpinning all seven VAT refund schemes we administer is that the body, eligible to claim a refund of VAT, must procure the goods or services which have incurred the VAT for its own purposes. This is clear from the wording of all the VAT refund schemes – for example, section 33(1) VATA:

“Subject to the following provisions of this section, where-

- (a) VAT is chargeable on the supply of goods to a body to which this section applies, or the acquisition of any goods by such a body from another member state or the importation of any goods by such a body from a place outside the member states, and
- (b) the supply, acquisition or importation is not for the purpose of any business carried on by such a body,

the Commissioners shall, on a claim made by the body at such time and in such form and manner as the Commissioners may determine, refund to it the amount of VAT so chargeable.”

Consequently, we need to see that the purchase is by the local authority as sole managing trustee.

### ***Application of charity law***

This appears to be the same as the point raised above.

### ***Improved guidance***

Thank you for your suggestion, which we will be pleased to consider once our discussions have been concluded.

Kind regards.

Yours sincerely,

David Ogilvie

Copy to: James Clarke, HMRC