



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

10th MAY 2018

VAT EXEMPTION ON THE SUPPLY OF SPORTING SERVICES

REPORT OF THE GROUP DIRECTOR CORPORATE AND FRONTLINE SERVICES IN DISCUSSIONS WITH THE LEADER OF THE COUNCIL, COUNCILLOR A MORGAN.

Author: Barrie Davies, Director of Financial Services 01443 680559

1. PURPOSE OF THE REPORT

- 1.1 This report provides Cabinet with details of a VAT exemption on the supply of sporting services.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 Note the outcome of the Court of Justice of the European Union in the case of the London Borough of Ealing (Case C 633/15);
- 2.2 Agree to implement the exemption on the supply of sporting services from 1st June 2018;
- 2.3 Note the one-off financial windfall from the backdated claims and the impact on the 2018/19 revenue budget;
- 2.4 Agree that this resource be set aside into an earmarked reserve for Invest to Save initiatives; and
- 2.5 Agree that, subject to the above, the on-going financial savings be factored into the Council's Medium Term Financial Plan from 2019/20.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The report sets out the position and the financial implications of a VAT exemption on the supply of sporting services.

4. BACKGROUND

- 4.1 The supply of sporting services by non-profit-making bodies have always been exempt from VAT. Local Authorities in the UK, however, were restricted from this exemption and accordingly sporting services provided by them have been subject to the standard rate of VAT (other than specific supplies, which fall under other exemptions, e.g, block bookings, taught swimming lessons).
- 4.2 This arrangement has been legally challenged and the Court of Justice of the European Union found, in the case of the London Borough of Ealing (Case C 633/15), that Her Majesty's Revenue & Customs (HMRC) had incorrectly restricted Local Authorities from the exemption and determined that it had to be applied to both public bodies and other non-profit-making bodies. Otherwise there would be a distortion of competition.
- 4.3 It, therefore, followed that Local Authorities were entitled to treat those supplies as exempt from VAT provided that they did so on a consistent basis. HMRC has accepted the decision.
- 4.4 The effect of the judgment is that Local Authorities can now opt to treat the provision of sporting services as exempt from VAT.

5. BACK-DATED CLAIM

- 5.1 At the outset of the London Borough of Ealing's proceedings, this Council submitted an initial protective claim to HMRC in February 2015, for over declared VAT ("stood behind" the London Borough of Ealing case). In line with VAT rules, it is possible to back-date claims for up to 4 years and accordingly our claim covered the period back to 1st February 2011
- 5.2 The acceptance by HMRC of the decision of the Court of Justice of the European Union now means that we are able to determine for ourselves whether we wish to invoke the exemption. If we decide to do so then it will enable a further (top up) claim to be submitted from the date of implementation.
- 5.3 It is proposed that an effective date of implementation be set at the 1st June 2018.

- 5.4 The estimated total of our back-dated claims for the period 31st May 2018 back to 1st February 2011 will amount to £3.1M (one-off resource).
- 5.5 The ongoing full year financial implication (additional income) is estimated to be £600k per year (base budget) at current income levels. The additional income for 2018/19 financial year (June 2018 to March 2019) will be £500k.
- 5.6 The combined backdated and 2018/19 part year benefit amounts to an estimated £3.6M which has not been factored in to the Council's financial plans to date. It is proposed that this be set aside (as pump priming) into an earmarked reserve to support Invest to Save opportunities as and when they arise.

6. PARTIAL EXEMPTION

- 6.1 Under Section 33 of the VAT Act 1994, Local Authorities and other bodies occupy a unique position in that they are entitled to reclaim the VAT they incur on expenditure for both Business and Non-Business activities. As noted above, however, some of our supplies (services) are provided as "Exempt" from VAT.
- 6.2 VAT incurred on expenditure which generates exempt income, however, is only recoverable if it is less than 5% of the total VAT on all expenditure incurred. If the VAT incurred exceeds 5% of the total VAT, the Council would be prevented from recovering any VAT from its exempt activities. The limit of 5% can be averaged over a 7 year period if a Local Authority were to breach the 5% limit in one or more years.
- 6.3 A Partial Exemption calculation is required to be undertaken annually to determine the Council's position. The calculation considers both capital and revenue expenditure.
- 6.4 After the application of the sporting services exemption, and reworked back to 2010/11, the Council remains within the 5% limit.

7 EQUALITY AND DIVERSITY IMPLICATIONS

- 7.1 In developing these proposals, an Equality Impact Assessment screening has been undertaken to ensure that:
- The Council meets the requirements of the Public Sector Equality Duties, and

- Due regard has been taken of the likely impact of the decision in terms of equality and discrimination.

8 CONSULTATION

- 8.1 There are no formal consultation requirements arising from this proposal.

9 FINANCIAL IMPLICATION(S)

- 9.1 The financial implications are set out in the report.

10 LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

- 10.1 The legal issues have been set out by the Court of Justice of the European Union.

11 LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT

- 11.1 This report supports our corporate priority Living within our Means.

12 CONCLUSION

- 12.1 This report sets out a proposed way forward in respect of the application of a VAT exemption on the supply of sporting services within the Council.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

10th MAY 2018

REPORT OF THE GROUP DIRECTOR CORPORATE AND FRONTLINE SERVICES IN DISCUSSIONS WITH THE LEADER OF THE COUNCIL, COUNCILLOR A MORGAN.

Item: VAT EXEMPTION ON THE SUPPLY OF SPORTING SERVICES

Background Papers

None.