



## **CABINET – 19TH SEPTEMBER 2018**

**SUBJECT: VAT EXEMPTION ON THE SUPPLY OF SPORTING SERVICES**

**REPORT BY: CORPORATE DIRECTOR OF EDUCATION AND CORPORATE SERVICES**

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### **1. PURPOSE OF REPORT**

1.1 To seek Cabinet approval to apply a VAT exemption on the supply of sporting services.

### **2. SUMMARY**

2.1 The supply of sporting services by non-profit-making bodies has always been exempt from VAT but Local Authorities in the UK have been restricted from this exemption.

2.2 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.

2.3 This report seeks Cabinet's endorsement to implement the exemption on the supply of sporting services from the 1<sup>st</sup> October 2018.

### **3. LINKS TO STRATEGY**

3.1 The revenue raised through charging for services is a key element in setting a balanced budget which in turn supports the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015: -

- A prosperous Wales.
- A resilient Wales.
- A healthier Wales.
- A more equal Wales.
- A Wales of cohesive communities.
- A Wales of vibrant culture and thriving Welsh Language.
- A globally responsible Wales.

### **4. THE REPORT**

#### **4.1 Background**

4.1.1 The supply of sporting services by non-profit-making bodies has always been exempt from VAT. Local Authorities in the UK, however, have been 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).

- 4.1.2 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.
- 4.1.3 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.
- 4.1.4 HMRC has accepted the decision and the effect of the judgment is that Local Authorities can now opt to treat the provision of sporting services as exempt from VAT.

## **4.2 Back-dated Claim**

- 4.2.1 During the course of the London Borough of Ealing's proceedings, Caerphilly CBC submitted an initial protective claim to HMRC in February 2016, 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. The Council's claim covered the period back to May 2012.
- 4.2.2 The acceptance by HMRC of the decision of the Court of Justice of the European Union now means that the Council is able to determine for itself whether it wishes to invoke the exemption. If Cabinet decides to do so then it will enable a further (top up) claim to be submitted from the date of implementation. It is proposed that the effective date of implementation be set as the 1<sup>st</sup> October 2018.
- 4.2.3 The estimated total of the back-dated claims for the period 30<sup>th</sup> September 2018 back to May 2012 will amount to a one-off sum of circa £1.3m (final figure to be confirmed). It is proposed that this one-off sum be set-aside in a Capital Earmarked Reserve for Leisure Services.
- 4.2.4 The ongoing full year additional income is estimated to be £264k. However, current income levels are falling short of the budgeted level so the first call on the additional annual income will be to ensure that current income targets are achieved. It is, however, estimated that an annual sum of circa £70k will be available to support the Medium-Term Financial Plan (MTFP) from 2019/20 onwards.
- 4.2.5 A small number of Clubs reclaim VAT paid on charges and will not be able to do so when the exemption is applied. Furthermore, a small number of Clubs currently have a VAT exemption through block bookings and these charges will need to increase to ensure consistency for all customers. It is recommended that delegated authority be given to the Interim Director of Communities, in consultation with the relevant Cabinet Member, to deal with any issues arising with these Clubs.

## **4.3 Partial Exemption**

- 4.3.1 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. However, some of the Council's supplies (services) are provided as "Exempt" from VAT.
- 4.3.2 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.

4.3.3 A Partial Exemption calculation is required to be undertaken annually to determine the Council's position. The calculation considers both capital and revenue expenditure.

4.3.4 After the application of the sporting services exemption, and reworked back to 2010/11, the Council remains within the 5% limit.

## **5. WELL-BEING OF FUTURE GENERATIONS**

5.1 Effective financial planning is a key element in ensuring that the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015 are met.

## **6. EQUALITIES IMPLICATIONS**

6.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan, therefore no Equalities Impact Assessment has been carried out.

## **7. FINANCIAL IMPLICATIONS**

7.1 The financial implications are set out in the report.

## **8. PERSONNEL IMPLICATIONS**

8.1 There are no direct personnel implications arising from this report.

## **9. CONSULTATIONS**

9.1 There are no formal consultation requirements arising from the proposals in this report.

## **10. RECOMMENDATIONS**

10.1 Cabinet is asked to: -

10.1.1 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).

10.1.2 Agree to implement the VAT exemption on the supply of sporting services from the 1<sup>st</sup> October 2018.

10.1.3 Note the one-off receipt of circa £1.3m from the backdated claims and agree that this be set aside in a Capital Earmarked Reserve for Leisure Services.

10.1.4 Note that any residual additional annual income will be factored into the Council's Medium-Term Financial Plan (MTFP) from 2019/20.

10.1.5 Agree that delegated authority be given to the Interim Director of Communities, in consultation with the relevant Cabinet Member, to deal with any issues arising from Clubs as explained in paragraph 4.2.5 above.

## **11. REASONS FOR THE RECOMMENDATIONS**

- 11.1 To ensure that Cabinet determines to apply the VAT exemption on the supply of sporting services from the 1<sup>st</sup> October 2018.

## **12. STATUTORY POWER**

- 12.1 The Local Government Acts 1998 and 2003.

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