

VAT guidance notes

Introduction

Local Trust provides grant funding to each Big Local area in response to a Big Local plan or proposal for funding. These are developed by a Big Local partnership, of which the majority of members are residents, but may also include people from local groups and organisations. Each partnership works with one or more locally trusted organisations, which administer the funding and make payments on the partnership's behalf. Some locally trusted organisations also deliver activities. Payments are normally grants, loans, and/or payment for services to third party suppliers, such as other organisations, groups, and individuals as set out in the area's Big Local plan.

This guidance for locally trusted organisations describes the treatment of two types of payment for VAT purposes:

- payments from locally trusted organisations to third parties in relation to Big Local
- grants from Local Trust to locally trusted organisations.

This guidance provides a general overview, but each locally trusted organisation must consider its own VAT position, particularly given that the specific arrangements may vary from one Big Local area to another.

Locally trusted organisation expenditure

The single most important point to bear in mind is that locally trusted organisations will generally be unable to reclaim VAT charged by suppliers to them. As this is the case, locally trusted organisations need to ensure that their budgets include the VAT that will be charged to them.

This is unlikely to change even if the locally trusted organisation is a body which reclaims VAT on its other activities. It may well have VAT-able activities that allow it to reclaim VAT on those costs, but that does not give it the right to reclaim VAT on the costs of its locally trusted organisation activities. These have to be considered separately.

An exception to this would be if a local authority is a locally trusted organisation, since these bodies have the right to reclaim VAT on any non-business activity they carry out (which would probably cover its activities as locally trusted organisation). However, each local authority should be able to obtain a view from its own finance department.

Where a local authority school (such as a community school, foundation or trust school, voluntary-aided or voluntary-controlled school) is the locally trusted organisation, the position will be the same as where the local authority is the locally trusted organisation.

The position for an academy school or free school is different. These schools are allowed to reclaim VAT on costs relating to the education they provide. So if a payment they make as locally

trusted organisation relates to the education they provide, then it may qualify for a claim. However, the rule specifically states that the 'proprietor of an academy' must act in that capacity

to fall within the rules, and this may not always be the case for payments the school makes as a locally trusted organisation related to Big Local. That said, HMRC's Information Sheet 09/11 suggests otherwise, and says that an academy can reclaim VAT on costs of any other nonbusiness activity it undertakes. Academies will need to consider whether as locally trusted organisation they are performing activities relating to the education they provide or if the academy is carrying out an activity which is not related to this. This point of interpretation is best clarified in writing by the academy directly with HMRC.

Other schools (not those described above) such as independent schools - would not be able to reclaim VAT if they are a locally trusted organisation.

However, all of this assumes that the locally trusted organisation is not performing a business activity. Guidance on whether that is the case is provided below - [Grants from Local Trust to locally trusted organisations](#). If the locally trusted organisation activity involves business supplies which are taxable for VAT purposes, this will allow a proportion of VAT to be reclaimed on costs if the locally trusted organisation is registered to reclaim VAT.

Not all costs incurred by a locally trusted organisation will automatically carry a VAT charge. Guidance on where this might arise is outlined below in Payments to third parties.

Payments to third parties

The fact that the payment from Local Trust to the locally trusted organisation is a grant for VAT purposes does not necessarily affect the treatment of payments the locally trusted organisation makes to third parties. Although HMRC has not published a particular policy concerning third party payments, it is understood from experience that, where third party organisations have been identified by the Big Local partnership as suitable to receive funding through the locally trusted organisation, and Local Trust is informed (which is usually the case), then any money from the locally trusted organisation to each of those third parties would normally be regarded as a grant. Grants do not involve a charge of VAT.

This is a general principle, and locally trusted organisations need to look at their position in detail.

For the most part, third party recipients will not provide services formally, as part of their own business activity, since they are not supposed to get any financial advantage out of receiving a grant from Local Trust. However, there may be situations where bodies such as local social groups, residents' associations, and church groups are providers, and they may decide that they are supplying services for which they have to charge VAT. The key determining factor is likely to be that, the more specific the service provided and the greater the clarity with which it is guaranteed to the locally trusted organisation, the higher the risks that the services will be subject to VAT rather than be a grant funded activity. To justify this view HMRC would have to consider that an organisation or group of this kind was acting in a business-like manner, with a degree of scale, regularity, and business organisation, which will be typical of a normal business.

It will not be possible to avoid VAT being chargeable by local contractors that a locally trusted organisation hires to perform services in the course of their ordinary business. For example, a decorating company hired to decorate a community hall, cannot treat the payment as a grant simply because it is derived from a grant from Local Trust. For them, the activity will be a service in line with their normal activities and will be subject to VAT.

Certain services may be exempt from VAT under specific provisions which will need to be determined on a case by case basis. An example might be education services provided by a nonprofit body.

If a locally trusted organisation uses employment contracts to take on workers, there will be no VAT to pay (in contrast to using self-employed people or contract workers), but the employment responsibilities, such as employee rights, need to be considered alongside this advantage. Using certain small traders may allow a locally trusted organisation to receive services without VAT if those traders trade legitimately below the VAT threshold. However, entering into cash jobs or similar structures where tax and VAT are being suppressed is an act of fraud.

Grants from Local Trust to locally trusted organisations

Local Trust is not VAT registered and has no capacity to reclaim VAT a locally trusted organisation may incur as a consequence of the issues discussed above. Any grant a locally trusted organisation receives is full and final and cannot be increased to meet unexpected VAT charges retrospectively. In addition, we expect locally trusted organisations to only draw down funding that is sufficient to cover the true cost, and not an amount that it can also reclaim from HMRC. For this reason, it is vital that locally trusted organisations have a strong and clear understanding of their own VAT position.

Local Trust's policy is that payments from Local Trust to locally trusted organisations are grants and therefore outside the scope of VAT (i.e. no VAT applies as such, though there may be VAT costs to cover as explained previously). The following factors supports this position:

- Local Trust does not have any detailed preconceived requirements as to how locally trusted organisations will use the funding that Local Trust provides from Big Local Trust; and Big Local partnerships and locally trusted organisations have full discretion on how to use the funding in furtherance of the Big Local outcomes as described in their plan.
- Local Trust is not seeking any one particular outcome in return for the funding it provides. Big Local partnerships create a Big Local plan that outlines their proposals for how they would like to use the money to enhance their Big Local area, which Local Trust reviews and endorses following an assessment.

Although in a sense Local Trust benefits from the work carried out using the funding that it provides, it does not receive any services which are to its direct benefit. The activities carried out by the locally trusted organisation are not performed on behalf of Local Trust because Local Trust does not provide any services in any community. It seems unlikely that HMRC would take the view that Local Trust has consumed actual services.

However, the fact that a payment from Local Trust to a locally trusted organisation is given as a grant does not mean that HMRC will agree with the position and therefore accept that the payment is outside the scope of VAT.

Third Party Consideration

There is another way in which the payments could be interpreted by HMRC, namely that Local Trust provides the payment on behalf of the recipients of the actual services. This, in the jargon, is known as 'third party consideration'. There has recently been some doubt as to what might constitute such a situation, but it is made much more likely in cases where we agree to release funds proportionate to the number of relevant cases. Thus, if the proposal by a Big Local partnership involves specific amounts of funding to a locally trusted organisation for each particular local 'intervention', then there is an increased risk that this would be seen as payment for services provided. For instance, if the locally trusted organisation 'charges' Local Trust, in agreement with the Big Local partnership, £50 per week per person for running a youth centre, then this could be regarded as a supply to each customer of the youth centre for the money which has been provided by Local Trust. This risk can be mitigated by ensuring that the activities are less prescribed, and have a broader remit and also not linking the funding to results.

Managing funds

Local Trust may make a grant to the locally trusted organisation which in turn provides funding to other parties.

Where a not-for-profit organisation accepts a grant, retains some for its own internal administration, and passes the balance to third parties, then the amount it retains is not deemed to be any form of income for any service provided. It is important that the locally trusted organisation is clear that it is not administering the grant from Local Trust as a third party to the community or partnership, else there is a risk that the amount retained by the locally trusted organisation could be deemed to be for management services provided to Local Trust and so subject to VAT. For this not to apply the partnership and locally trusted organisation have to take full responsibility for deciding on the use of the funds locally rather than the locally trusted organisation and Local Trust having that agreement.

Charging other parties

In the unlikely event that locally trusted organisations make charges to other parties for any services under Big Local; this could also give rise to taxable supplies being made.

Exemption from VAT

A view is sometimes expressed that the funding from Local Trust can be 'exempt' from VAT in the same way as local authority income is usually 'exempt'. However, this is not possible because local authority income is compulsory tax derived income. Other local authority trading income is either exempt (e.g. residential rents) or taxable (e.g. car parking fees) as set out in VAT legislation. VAT is governed by EU law and the UK government cannot create any exemptions that are not sanctioned by EU law. This means that no specific exemption can be arranged for Local Trust funding.

Summary

In summary, whilst we think that Local Trust funding to locally trusted organisations is highly likely to be outside the scope of VAT, we cannot guarantee that in all cases. And, locally trusted organisations may make taxable supplies to other parties. If taxable supplies are made this will

lead to VAT being payable on the relevant income, minus any VAT on costs which can be offset against that income under the specific (and complex) VAT rules relating to cost allocation. As stated above, every locally trusted organisation is responsible for having a strong and clear understanding of its own VAT position in relation to Big Local funding.

The information and comments contained in these guidance notes are for general information only and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, professional advice should be sought.

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This document will be developed over time with input from the people using this material. If you have thoughts on how this document can be made more useful for you, particularly if you live in one of the Big Local areas, please let us know. If you need this document in other formats or a community language please get in touch with Local Trust and we will help you.

The endowment for the Big Local programme is held by the Big Local Trust and overseen by Local Trust. The Big Local Trust was established by the National Lottery Community Fund with a National Lottery grant of £196,873,499.

Published by Local Trust: May 2015, version 2

Local Trust company no. 07833396

Local Trust charity no. 1147511

Big Local Trust charity no. 1145916

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