

COMMITTEE:	CABINET
DATE:	10 TH APRIL 2002
SUBJECT:	VAT - OPTING TO TAX THE WINTER GARDEN AND CONGRESS THEATRE
REPORT OF:	PAUL GOWER, GROUP ACCOUNTANT, FINANCE AND CORPORATE SERVICES
Ward(s):	Devonshire
Purpose:	To seek members approval to obtain permission from HM Customs and Excise to opt to tax hirings of the Winter Garden and the Congress Theatre.
Contact:	Paul Gower, Group Accountant, Telephone 01323 415147 or internally on extension 5147.
Recommendations:	That approval be given to seek permission from HM Customs and Excise to opt to tax hirings of the Winter Garden and the Congress Theatre

1.0	<u>Introduction/Background</u>
1.1	All local authorities have a special dispensation for the recovery of VAT on activities generating exempt income, provided that a specified threshold is not breached. This threshold is calculated as being less than 5% of all VAT paid on goods and services

2.0	<u>Exempt Income</u>
2.1	<p>Exempt income arises when an authority makes a supply of goods or services which fall into one of the thirteen groups as defined in the VAT Act 1994.</p> <p>The main sources of exempt income that this Council has arise from:</p> <p>§ series of lets from sports facilities (e.g. hiring of football pitches)</p> <p>§ cremations</p> <p>§ hiring of rooms at council venues (including the theatres)</p>
2.2	<p>Any VAT incurred on expenditure in these areas, needs to be included as part of the partial exemption calculation.</p>
3.0	<p><u>The Partial Exemption Calculation</u></p>
3.1	<p>As a local authority, Eastbourne Borough Council can recover input tax attributable to exempt activities where it is an insignificant proportion of the total VAT incurred. To be insignificant and therefore fully recoverable, the input tax attributable to exempt activities must be less than 5% of the total VAT incurred on all expenditure in the year.</p>

3.2	This means that the Council must undertake a special calculation each year to ensure that VAT recovered on expenditure relating to exempt income generating activities (exempt income tax) does not exceed 5% of the total VAT reclaimed by the authority.
4.0	<u>Current Limits</u>
4.1	<p>During 2000-2001 the Council recovered a total of £3.145m input tax. This meant that the 5% limit for 2000/2001 was:</p> $£3.145m \times 5\% = £157,250$ <p>The total VAT recovered relating to exempt supplies totalled £105,111 in that year. This equates to 3.34% of the total input tax and was therefore below the 5% limit.</p>
5.0	<u>Exceeding the 5%</u>
5.1	If the 5% limit is exceeded the authority has to repay the total amount of exempt input tax it has previously recovered, plus the amount by which it has exceeded the 5% limit. For 2000-2001 this would have amounted to over £157,250 which would have fallen as an additional unbudgeted cost on the Council's finances.
6.0	<u>The Need to Opt to Tax</u>
6.1	The Council's capital strategy includes the proposal to spend £1m over the coming financial year on improvements and structural repairs to the theatres and associated buildings.

6.2	<p>The Congress Theatre and the Winter Garden all generate exempt income for VAT purposes, largely through hirings. Therefore any VAT incurred on expenditure (input tax) for these premises has implications for the partial exemption calculation.</p>
6.3	<p>The capital expenditure planned on the Winter Garden is likely to put at least an extra £40,000 of VAT into the partial exemption calculation. This could be higher depending on the level of hirings and conferences during the forthcoming year.</p>
6.4	<p>This expenditure on its own is very likely to cause the Council to breach its partial exemption limit, the consequences of which are described in paragraph 5.1 above.</p>
6.5	<p>Other expenditure in the Council's capital strategy will also push this authority near to or over the 5% limit.</p>
6.6	<p>The Council can therefore seek permission from HM Customs and Excise to 'opt to tax' the Winter Garden and Congress. This in effect makes the hirings of the theatres a taxable supply rather than an exempt supply.</p>
6.7	<p>Once the option to tax has been applied, VAT at 17.5% must be added to the hiring fee for the next 20 years. This will be an additional cost to the hirer.</p>

7.0	<u>Implications for Hirers</u>
7.1	Where the person/organisation hiring the venue is VAT registered then the VAT paid can be recovered.
7.2	Where the person/organisation is not VAT registered, then the VAT paid is effectively an extra cost of 17.5%.
8.0	<u>Financial Implications</u>
8.1	A growth item of £10,000 has been included in the budget for 2002-2003. This will be used to compensate for any bookings that have been made in advance at old year prices and also to assist those persons/organisations not registered for VAT in managing the transition to the new arrangement.
9.0	<u>Consultations</u>
9.1	<p>Consultation has been carried out with the following groups:</p> <p>§ WJB Chiltern – Tax advisers – advice has been sought on the issue of connecting buildings</p> <p>§ Brighton and Hove Council – Opted to tax similar premises in Brighton</p> <p>§ Theatres management</p> <p>§ All lettings groups/organisations who have hired the facilities in the past two years – A letter was sent to all concerned parties.</p>
10.0	<u>Conclusions</u>

10.1	<p>The levels of planned capital expenditure in areas generating exempt income put the Council at risk of breaching the 5% limit which would result in considerable additional cost to the Council. It is therefore recommended that permission be sought from HM Customs and Excise to opt to tax the hirings of the Winter Garden and the Congress Theatre.</p>
	<p>Paul Gower Group Accountant, Finance and Corporate Services</p>
	<p>Background Papers: None.</p>
	<p>OpenlinkCFO/reports/Cabinet 02.04.10 VAT</p>