

VAT CLAIM ON SPORTING INCOME UPDATE

Presented by the Head of Finance

EXECUTIVE SUMMARY

This report provides a review of the refund received in respect of VAT charged on Sporting Income, as well as presenting initial options for use of this receipt.

RECOMMENDATION

Members Note: (1) Net receipt of £1,792,298.

BACKGROUND

- 1 The Authority was initially contacted in 2010 by KPMG with regards to the review works that they were engaged with other local authorities to attempt to determine that provision of sport and leisure services provided by the Authority and local authorities were outside the scope of VAT, and a subsequent claim could be made for overpaid output tax to HMRC.
- 2 The case concerned whether VAT is payable on the provision of local authority sport and leisure services or whether such services ought to be treated as 'non-business' as they were being provided under a 'Special Legal Regime' (SLR). There was a second question that concerned whether these services would not give rise to significant distortions of competition which also needed to be assessed.
- 3 The Authority, via KPMG, lodged a number of protective claims with HMRC which covered the period related to sporting activities that were operated by the Authority during the period April 2006 to March 2015. Between 2015-2020 the sports venues were operated by Lee Valley Leisure Trust Limited (trading as Vibrant Partnerships), who were able to adopt a different approach to VAT as a charity. A further claim was then lodged to cover the period from April 2020 up to March 2022 ie the period during which the Authority was operating the venues before commencement of the new Leisure Services Contract with GLL in April 2022.
- 4 After initial claims were rejected by HMRC, KPMG subsequently presented a

number of cases that covered the jurisdictions of England & Wales (Chelmsford City Council v HMRC); Scotland (Midlothian Council v HMRC); and Northern Ireland (Mid-Ulster District Council v HMRC).

- 5 On 17 October 2020 the First-tier Tribunal (Tax Chamber) determined the appeals in favour of the local authorities on the basis of their acceptance that the leisure services at issue were supplied pursuant to a SLR and so can be treated as 'non-business' supplies.
- 6 In December 2020, HMRC appealed the First-tier Tribunal's decision in relation to SLR in Chelmsford's case but not the equivalent decisions for Scotland and Northern Ireland.
- 7 The reason HMRC adopted a different position in England and Wales was that they saw a material difference between the law as it applies in Scotland and Northern Ireland, where there is a positive obligation to provide public leisure services, and the position in England and Wales, where there is only a permission to provide such services.
- 8 The appeal was heard in March 2022, with the decision to dismiss the appeal being published in June 2022. Following this decision, HMRC needed to review whether treating these services as non-business did not result in a significant distortion of competition with commercial operators. This was concluded in early 2023, with the final briefing note issued by HMRC on 3 March 2023 setting out the position, with the process for local authorities/the Authority resubmitting the claims.
- 9 The Authority's updated claims from April 2006 to March 2015 were resubmitted on 7 March 2023, with the additional claim from April 2020 to March 2023, submitted on 5 May 2023.
- 10 HMRC followed due process and requested some detail to back up our claim, which officers provided, before the Authority received notification in late August 2023 that the claim would be accepted, and that repayment along with interest, would be paid.
- 11 In total, the Authority received £1,817,759 directly relating to overpaid output tax, along with £141,037.46 in statutory interest. From this, the Authority paid an agreed fee of provision of services to KPMG of £166,497.70 which leaves a net surplus of £1,792,298.

USE OF £1.8MILLION RECEIPT

- 12 As this receipt is revenue in nature, the Authority has great flexibility in terms of how it is used. It does give us opportunity to include within the general revenue fund, the capital fund pool, ring-fence for specific projects, or for repayment of existing debt.
- 13 Officers recommend here that rather than allocate the receipt to specific areas, or schemes, yet, that it is held, ring-fenced, within the General Fund to allow officers and Members to fully explore needs and priorities during the budget 2024/25 process.

The Authority is just starting the process to review and set the 2024/25 budget, along with updating the forward Medium Term Financial Plan to factor in decisions relating to Business Plan priorities, as well as identifying general

operational need.

14 Contribution to Reserves

The Authority's current Reserves policy is to hold a General Fund balance of between £3m - £4m, although Members agreed in January (Paper A/4329/23) to a short term movement in the minimum level of reserves to below £3m.

15 Based on the current outturn (Paper E/816/23), General Reserves are predicted to be around £2.8million at 31 March 2024.

16 Reserves are designed to serve three main purposes:

- working balance to help cushion the impact of uneven cash flows;
- contingency to cushion the impact of unexpected events or emergencies;
- building up funds to meet known or predicted requirements – often referred to as earmarked reserves.

17 CIPFA recently issued updated guidance (CIPFA Bulletin 13 – Local Authority Reserves and Balances (Updated) March 2023), on the legislative and regulatory framework, the role of the chief finance officer, and types of reserves. However, the main principle was the need to assess the adequacy of unallocated general reserve when setting budgets, looking at strategic, operational and financial risks.

18 There may be opportunity to re-establish this reserve to a level within the approved range, although until the proposed budget for 2024/25 has been established, it is not possible to determine exactly how much may be required

19 Repayment of Debt

The Authority currently has £25million of external debt in relation to the redevelopment of the new Ice Centre. The annual charge to revenue in respect of this, as a statutory charge in the form of the Minimum Revenue Provision (MRP), is £625,000. In addition, there will be a related borrowing interest cost.

However, £1.8million will only represent a reduction in MRP of £45,000, and whilst there will be a reduction to interest costs, the opportunity to utilise these funds elsewhere will be lost, along with the short-term gain receivable in terms of investment income.

20 Business Plan 2024/27

The Authority has produced a draft Business Plan for 2024-27 that will be presented to Members (Paper A/4345/23), which includes a number of possible investments / projects across the Authority in both Open Spaces and built facilities. Whilst a small number of these will look for external funding, the majority will require financing from within the Authority. Initial studies may need to be commissioned to advance key projects so a funding allocation will be required.

In addition delivery of the Environmental Policy will require some revenue source funding across a number of year.

21 Operational Budgets 2024/25 onwards

Whilst the Authority does produce a Medium Term Financial Forecast, this is just

a high level estimation for future outturn, and does not take into account the short term impact that the Authority may face. The Authority is required to determine its budget for the coming year by 24 January preceding the start on 1 April. Officers have now started this process, leading up to the Member Budget Workshop on 14 December 2023, and Authority Meeting on 18 January 2024.

This will determine the budget and levy for 2024/25.

- 22 Therefore, it would be more prudent rather than to allocate the receipt to specific areas or schemes yet, that it is held, ring-fenced, within the General Fund to allow officers and Members to fully explore needs and priorities during the 2024/25 budget process.

ENVIRONMENTAL IMPLICATIONS

- 23 There are no environmental implications arising directly from the recommendations in this report.

FINANCIAL IMPLICATIONS

- 24 These are dealt with in the main body of the report.

HUMAN RESOURCE IMPLICATIONS

- 25 There are no human resource implications arising directly from the recommendations in this report.

LEGAL IMPLICATIONS

- 26 There are no legal implications arising directly from the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

- 27 There are no risk management implications arising directly from the recommendations in this report.

EQUALITY IMPLICATIONS

- 28 There are no equality implications arising directly from the recommendations in this report.

Author: Keith Kellard, 01992 709 864, kkellard@leevalleypark.org.uk

LIST OF ABBREVIATIONS

CIPFA	Chartered Institute of Public Finance and Accountancy
SLR	Special Legal Regime