

## VAT CONSULTATION SERVICE

### Report by the Executive Head of Financial Services

#### 1.0 SUMMARY

- 1.1 This report is intended to seek the Cabinet Member's approval to engage Consultants to investigate possible VAT refunds within Cultural and Leisure services.

#### 2.0 BACKGROUND

- 2.1 VAT is a complex area of taxation often involving interpretation of guidance and legislation. At various times, HM Revenue and Customs have changed rulings on the treatment of VAT based on the outcome of legal appeals against their interpretation of the legislation. This has sometimes resulted in an opportunity arising for the Council to reclaim past VAT paid and change the VAT treatment of income for the future.
- 2.2 The Councils have been approached by KPMG who claim to have justification for pursuing further claims in relation to Leisure and Cultural services; in addition the proposal may change the tax treatment of certain activities permanently which would bring an on-going benefit to the Council. This is based on their specialist legal and taxation knowledge and is covered by Intellectual Property copyright. For this reason the full details of any potential claim is not included within the report. The VAT officer has already carried out some initial investigation and has identified a possible £700k (before interest), which could form part of one of these claims. However, any such claim will need to be subject of extensive legal argument before it could succeed and so is speculative in nature.
- 2.3 Worthing Borough Council is able to benefit from this opportunity as the Leisure Services are still being provided in-house by the Council. Any initial claim made will be backdated for 4 years and thereafter monthly claims will be lodged with HMRC. Unfortunately, Adur District Council have externalised Leisure provision to Adur Community Leisure and so will not be able to benefit from this opportunity, although a minor claim will be made on their behalf.

#### 3.0 PROPOSAL

- 3.1 There are limited alternative options available for this service, given the Intellectual Property rights which the consultants hold. There are two sets of terms being offered, which are non negotiable:

### **3.0 PROPOSAL** (continued)

**Option 1:** 10% of savings, plus £500 for the protective appeal, plus a lead case First Tier Tribunal cost contribution up to a maximum of £5,000; or

**Option 2:** 20% of savings, plus £500 for the protective appeal.

3.2 The service provided by KPMG will consist of the claim submission and the protective appeal, which will be required to protect the Council's claim.

The company undertake to:

- Review the basis on which the Council has provided sporting services to determine the quantum of VAT which may have been overpaid on the basis that the provision of sports and leisure services by the Council is a non business activity on which no VAT is due, and subsequently prepare and submit a claim to HMRC;
- As required, attend meetings/draft correspondence to HMRC in order to finalise the claim; and
- If necessary, following an adverse decision by HMRC, prepare and submit a formal request for reconsideration of the decision.
- In the event that KPMG consider that a formal appeal to the First Tier Tribunal is required in order to progress or protect the claim, they will:
  - Lodge a protective appeal with the First Tier Tribunal, which will involve us submitting a Notice of Appeal and making an application for the Council's appeal to be stood behind the Isle of Wight case, or another identified lead case, if required
  - Take all necessary and appropriate action to ensure that the Council's appeal is progressed in accordance with the relevant timescales.

3.3 The potential size of the fee reflects the time and cost that KPMG will incur in employing specialist legal and technical advice. However, there is little risk to the Council other than an element of the VAT officer's time and the initial fees, which could prove to be abortive.

3.4 Given the potential benefit involved it is recommended engage the consultants on this speculative basis and to agree to pay a contribution to the First Tier Tribunal cost.

### **4.0 LEGAL**

4.1 Paragraph 8.3.1 of the Council's constitution provides that an exemption from the Standing Orders relating to contracts can be approved by the Council, the Cabinet or the Cabinet Member.

## **4.0 LEGAL**

4.2 A contract with a consultant which would potentially generate a fee to the consultant of £70k would normally require a tendering process before a contractor could be appointed. On this occasion the potential fees, if £700k was recovered, fees of between £70k and £140k would be due. However, the Council is satisfied that the contractor holds certain intellectual property rights in this area and therefore there would be no reasonable alternative contractor.

## **5.0 FINANCIAL IMPLICATIONS**

5.1 The initial fee of £500 can be met from within existing budgets. In addition, a carry forward request has been agreed to fund the potential requirement to contribute to legal costs.

5.2 Any further fees due would be offset against refunds received and so there would be no additional cost to the Council. If successful, the Councils would benefit from 80 - 90% of the VAT reclaimed.

## **6.0 RECOMMENDATION**

**6.1 The Cabinet Member for Resources is asked:**

- (a) To recommend to Council that under these circumstances standing orders are waived and KPMG are appointed to carry out VAT consultancy work;**
- (b) Agree to the payment of an upfront fee of £500 and a contribution of up to £5,000 towards the legal costs thereby securing a 10% commission rate.**

**Local Government Act 1972**

**Background Papers:**

**Contact Officer:**

Sarah Gobey  
Executive Head of Financial Services  
Room 5, Town Hall,  
01903 221221  
Sarah.gobey@adur-worthing.gov.uk

## **SCHEDULE OF OTHER MATTERS**

### **1.0 COUNCIL PRIORITY**

- 1.1 Any refunds received can be either reinvested in services or taken as a one off saving and could therefore contribute to providing improved customer services.

### **2.0 SPECIFIC ACTION PLANS**

- 2.1 Matter considered and no issues identified

### **3.0 SUSTAINABILITY ISSUES**

- 3.1 Matter considered and no issues identified

### **4.0 EQUALITY ISSUES**

- 4.1 Matter considered and no issues identified

### **5.0 COMMUNITY SAFETY ISSUES (SECTION 17)**

- 5.1 Matter considered and no issues identified

### **6.0 HUMAN RIGHTS ISSUES**

- 6.1 Matter considered and no issues identified

### **7.0 REPUTATION**

- 7.1 Matter considered and no issues identified

### **8.0 CONSULTATIONS**

- 8.1 Matter considered and no issues identified

### **9.0 RISK ASSESSMENT**

- 9.1 There is some risk that the fees paid will not be recovered from the VAT reclaimed but this has been balanced against the overall potential benefit of reclaiming VAT.

### **10.0 HEALTH AND SAFETY ISSUES**

- 10.1 Matter considered and no issues identified

### **11.0 PROCUREMENT STRATEGY**

- 11.1 The report is outside the procurement strategy for the reasons stated in paragraph 4.1.

### **12.0 PARTNERSHIP WORKING**

- 12.1 Whilst the main claim will be made on behalf of Worthing Borough Council, it may be possible to make a minor claim for Adur District Council.