



Private and Confidential

Lord Corrigan Promotions Ltd
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20th May 2022

Dear Mr Corrigan

Re: VAT - Scarborough Borough Council and Yorkshire Coast BID Limited

Further to your instructions, we write to provide a VAT opinion regarding the commercial relationship between Scarborough Borough Council (“SBC”) and Yorkshire Coast BID Limited (“the BID”), in particular, whether SBC’s position which, it is acting as a “collecting agent” on behalf of the BID is consistent with the VAT treatment that SBC is adopting.

Background

We understand that SBC claims that it is the “Collecting Agent” for the BID. It states this on its BID Levy invoices, and claims, on the Final Demand Notices that it is required to act as the collecting agent by statute.

The BID is a separate legal entity, which was incorporated on 12th February 2019, as a private company limited by guarantee, without share capital under incorporation number 11820859. We understand that is an event organiser incorporated to deliver the agreed objectives of the BID.

The BID is registered for VAT under VAT number 32 4894 184. We understand that it sends a VAT invoice to SBC for the services that it is required to provide under the BID agreement. The invoice amount will be for levy collected, plus VAT at the standard rate of 20%.

The Business Improvement Districts (England) Regulations 2014 (regulation 15) provides “The relevant billing authority shall, by the commencement date, provide for the imposition, administration, collection, recovery and application of the BID levy and Schedule 4 shall have effect with respect to those matters.”

Furthermore, the Business Improvement Districts Technical Guide for Local Authorities, Section 4 - Collection of the BID Levy, provides,



“The local authority is required to manage the collection and enforcement of BID levy charges. In practice the BID body and the local authority establish a levy collection agreement often known as an Operating Agreement. The principle of this agreement is to define the principles and processes for collecting the levy; enforcing the payment of the levy; reporting on collection and bad debt; monitoring provisions between then BID and the local authority; and providing regular detailed and summary information on the service to the BID as the client.

Best practice suggests that a draft arrangement between the authority and BID should be available for scrutiny by businesses during the ballot period. The local authority may opt to send the levy bill out as part of the business rate bill or as a separate bill.

The local authority is also required to issue an annual billing leaflet with the levy bills, and this should include the previous year’s financial summary and the forecast for the forthcoming year as per Schedule 4 to the BID Regulations, paragraph 3 (2). In practice, a billing leaflet is often produced by the BID with the inhouse design style and approved by the local authority prior to printing.”

SBC will take enforcement action to secure payment in a similar way to collection of non-domestic rates. Where a payment is overdue one final notice will be issued requiring payment within seven days. If payment is not received, then a complaint will be made to the Magistrates Court seeking a liability order. Additional legal costs will be charged if legal proceedings are commenced.

Once a liability order is granted the Council can instruct an enforcement agent to seize goods to be auctioned to raise the money to pay the levy. In some circumstances a petition can be made for bankruptcy or the compulsory winding up of a company.

By law SBC are the billing authority for the Bid, which means it is responsible for the collection of BID levies. SBC is not responsible for providing the BID services, as they are provided by the BID.

The funds collected through the levy can only be used to pay for BID services and SBC’s costs in collecting the levy. SBC hold the funds received in the BID revenue account and make payments to the BID to pay for the BID services that are provided by the BID company.

VAT Position

As you are aware, Business Improvement Districts (BIDs) are a partnership between local authorities and local businesses to provide additional services or improvements to a specified area. This is funded in whole or in part by a levy additional to the non-domestic rates.

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The general VAT rules allow businesses to recover VAT on costs, where those costs relate to taxable business activities. However, the Value Added Tax Act (“VATA”) 1994, s.33, provides special rules for local authorities that allow them to recovery VAT on non-business activities.

It has been confirmed that BIDs do not fall within the VATA 1994 definition of a local authority and so are not eligible for the refunds of VAT under VATA 1994, s.33.

The BID Levy is outside the scope of VAT. Therefore, if the BID were legally responsible to provide its services direct to the businesses in return for the payment of the BID levy, this would be regarded as non-business and the BID would not be able to recover the VAT on its purchases relating to the provision of the services provided. Thus, the VAT on purchases would be a cost to the BID resulting in a decrease of funds by 20%.

Hence, why the operation agreement has been set up so that SBC is the principal providing the services to the businesses and the BID provides its services to SBC.

The VAT position of BIDs has been clarified by HMRC (HM Revenue and Customs) as follows:

1. The BID levy, as collected by the local authority, is local authority property and is ring-fenced for the specific purpose of the BID.
2. The BID company is the sub-contractor engaged by the local authority to deliver the BID objectives.
3. The BID company is making taxable supplies to the local authority and in the normal way must charge VAT to the local authority.
4. This VAT will be charged via an invoice that the BID company issues to the local authority for payment of the BID levy income.
5. The local authority can recover that VAT under VATA 1994, s. 33.
6. The BID company can then recover any VAT it incurs in delivering the BID services subject to normal rules.
7. Most of the income received by the BID company from the local authority will be taxable at the standard rate of VAT which is 20%. However, it is possible that some supplies made may be exempt from VAT, but this is highly unlikely. Where such supplies are made any VAT incurred by the BID will be irrecoverable.



8. The operating agreement between the local authority and the BID company must incorporate these provisions in relation to the charging of VAT on the BID levy invoice.

The guidance published by HMRC represents a generous concession to reflect the situation that would apply if the local authority carried out the works/services themselves. By acting as a sub-contractor to the local authority (point (2)) the concession enables the BID company to recover all the VAT it incurs in delivering the services.

This VAT treatment is endorsed by HMRC in its published Manual, here.

If SBC were acting as agent to the BID, the BID would not be making VAT-able supplies as the levy is outside the scope of VAT. Therefore, the BID would not be eligible to register for VAT and could not reclaim VAT on all the costs it incurred on the events it organises.

Although the Operating Agreement between SBC and the BID refers to SBC as the “collecting agent,” it does not legally provide for an agent/agent/principal relationship. It clearly states the SBC will be engaging the BID to perform the additional BID services and SBC will be paying for these services using the BID Levy collected. The Operating Agreement merely sets out how the local authority is to manage the collection and enforcement of BID levy charges.

The fact that the BID can register for VAT and charge VAT on the services it carries out for SBC proves that the economic reality of this agreement is that SBC are acting as principal and not agent when collecting the BID levy.

Conclusion

In conclusion, SBC is required to deliver additional services to business owners in the particular location. As these additional services are not covered by the existing business rates SBC will charge a compulsory BID levy to cover these services.

SBC has subcontracted these services to the BID and the BID Levy is used to pay the BID for said services. The BID is VAT registered and accordingly charges VAT on its services.

It is our professional opinion that SBC is acting as principal, not agent, when providing the BID services to the business in the BID area.

Website Information

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In addition, you also asked, “Is it a legal requirement for a company to display its VAT number on its website?”

We can confirm that the Companies Act 2006 the E-commerce Regulations passed in 2002 requires disclosure of certain information about the identity of a company on its website. This information does not need to be on every page, but it does need to be easily found so it will typically be included on the Contact Us page, or About Us page. You will also find this sort of information placed on the footer section of webpages.

The following is a list of information, which is required by law to be disclosed on a company’s website:

- Company name
- Company registered number
- Place of registration, such as England and Wales
- Registered office address
- Company name, postal address, and company email address
- How to contact your business via non-electronic means
- Company VAT number, even if the website is not being used for ecommerce transactions
- The name of any trade bodies or professional associations that the business is part of, including membership or registration details.

The Bid is registered for VAT under VAT number 32 4894 184. Therefore, this should be displayed on its website.

We trust that this advice meets with your expectations, but should you have any queries please do not hesitate to contact me.

Yours sincerely,

Jane Deeks

Signed by Jane Deeks
Duly authorised to sign for and on behalf of Deeks VAT Consultancy Ltd.