

VAT Directorate

3C 07
100 Parliament Street
Westminster
London
SW1A 2BQ

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Our ref Q5887c/1094
Your ref

Phone 020 7147 2622
Fax
Email alan.mckay@hmrc.gsi.gov.uk

Memo

Subject CIPFA VAT Committee - Local Authority cemeteries & crematoria - memorials

To Maria Menezes, CIPFA

From Alan Mckay, HMRC

Copy Andy Stapley, CIPFA VAT Committee Chair

Dear Maria

Local Authority cemeteries & crematoria - memorials & VAT

1. The purpose of our memo is to announce a change of VAT policy in respect of supplies of memorials by local authorities in their cemeteries.
2. Our policy in respect of supplies of memorials by local authorities in crematoria remains unchanged.
3. Our memo applies to all local authorities within the United Kingdom and supersedes our earlier advice to the CIPFA VAT Committee of 20 August 2004.

Policy

4. **Cemeteries:** the view expressed by us to the CIPFA VAT Committee on 20 August 2004 was that supplies of memorials by local authorities in their cemeteries are outside the scope of VAT. Our view of the law now is that these supplies are taxable at the standard rate.
5. **Crematoria:** our view of the law in respect of supplies of memorials by local authorities in their crematoria has always been and remains that these are taxable at the standard rate.

Background

6. Article 13 of the Principle VAT Directive sets out that services supplied by public bodies are outside the scope of VAT where they are regulated by statute (a Special Legal Regime - SLR) which does not apply to the private sector, unless this would significantly distort competition between public and private sector bodies supplying the same service.
7. In 2000 the VAT Tribunal case of Rhondda Cynon Taff County Borough Council [2000] VATDR 149 found that the Local Authorities Cemeteries Order 1977 (LACO) was a SLR when local authorities provided and maintained cemeteries.

8. Following the VAT Tribunal decision we (HMC&E as was) issued Business Brief 04/2000 which confirmed local authority cemetery activity was outside the scope of VAT. The brief specifically excluded certain supplies from the scope of LACO such as provision of books of remembrance and the erection of headstones for which a charge is made. These supplies remained taxable at the standard rate.

9. In August 2004 following representations from local authorities our view of the law was that memorials supplied by local authorities in their **cemeteries** were covered by an earlier version of LACO from 1974 and outside the scope of VAT. Our view was that LACO did not cover memorials supplied by local authorities in their **crematoria** and as such these supplies remained taxable at the standard rate.

10. In March 2009 we received challenges to the standard rated treatment of local authority supplies of memorials in crematoria which caused us to review our position.

11. During 2011 the Ministry of Justice (MoJ) which has responsibility for LACO confirmed to us that the provision of memorials by a local authority, whether in their cemeteries or crematoria fell outside the scope of LACO.

12. It follows from the MoJ advice that LACO 1977 & 1974 is not a SLR that enables supplies by local authorities of memorials in their cemeteries & crematoria to be treated as outside the scope of VAT. These supplies are therefore taxable at the standard rate.

Implementation date

13. We wish to allow local authorities sufficient time to amend their method of accounting for memorial supplies. We will commence our new policy from 1 April 2012.

Memorials

14. We take standard rated supplies of memorials for a charge generally to mean:
 the supply, erection & inscription of headstones (as from 1 April 2012)
 the supply of a memorial within a garden of remembrance
 the supply of a memorial bench

Fleming claims

15. Fleming claims for over-declared output tax in respect local authority supplies of memorials in cemeteries & crematoria will be refused, subject to the usual appeal rights.

16. We acknowledge that our advice to CIPFA on 20 August 2004 was incorrect. Given our view of the law now it follows that the output tax charged & accounted for prior to 2004 was always due in law and that there is no vires under the VAT Act 1994 to repay tax that was and remains due in law. Case law demonstrates that persons cannot have a legitimate expectation that a public authority, such as HMRC, will act unlawfully and make repayments of amounts not due in law.

Help & Advice

17. If you have enquiries concerning the content of this memo help & advice may be obtained as follows:

Local authorities with an HMRC Customer Relationship Manager should contact their Customer Relationship Manager.

Local Authorities allocated to an HMRC Customer Co-ordinator Team should contact the Customer Co-ordinator Team.

All other local authorities should contact HMRC Written Enquiries at the following address:

HM Revenue & Customs
VAT Written Enquiries Section
4th Floor, Alexander House
Victoria Avenue, Southend, Essex
SS99 1BD

Regards

Alan Mckay
VAT Supply