

Advice note from Richard Croker , Pinsent Masons dated 23/02/2020

Further to the below I write to confirm our findings as to the corporation tax and VAT position of the LEP as a separate legal entity since March 2019, having reviewed the LEPs website and relevant HMRC guidance.

Corporation tax

In summary, as an independent body corporate, the LEP as a company limited by guarantee which carries on the business of the Marches LEP will be liable for corporation tax on any profits it makes from such activities as constitute a trade carried on by it. The concept of a trade implies the provision of goods or services to a customer for reward : its customer could be third parties or the sponsoring LAs . If there is such a trade , the profits should be computed on standard principles, which will broadly follow the accounts. However as the LEP does not make charges to third parties, unless the relationship between it and the LAs amounts to a commercial relationship the LEP will not be regarded as trading. HMRC guidance provides support for the view that the activities of an LEP are not trading for tax purposes - BIM40455

Very broadly speaking the business of the LEP is disbursing grant income. Assuming it is not trading , to the extent LEP is funded with central government grant income under s31 LGFA 2003, and matched LA funding , which is applied in grants, it will not be taxable on those amounts as income. However, where it is in receipt of interest income on the balance of its grant income and working capital from time to time such income will be chargeable to tax in principle and LEP should expect to pay corporation tax at 20% on the net amount of interest accrued due in the period. As the LEP is not trading it will not have any tax deductible expenses to be set against such taxable income.

VAT

The LEP as a company limited by guarantee is a separate entity from its members for VAT. It is likely be considered to be in business for VAT purposes, only to the extent it makes charges to third parties or recharge costs to its members. It will need to register for VAT as a separate entity only if it makes such supplies over the registration threshold of £85,000. However the indication is that the LEP does not provided services for a consideration since the cost of its activities is discharged by its grant income not from charges to recipients and the terms of its grant income, although subject to conditions, do not suggest that it would be regarded as provided in return for services in VAT terms. To the extent this assumption is correct, the LEP will not be obliged or entitled to register for VAT and will not be regarded as being in business for VAT purposes.

Therefore , as a separate entity, it will not be able to benefit from the local authority's entitlement to recover VAT attributable to non business activity under s33 VATA 1994. Instead , any VAT incurred by the LEP on eg supplies to it by eg. Shropshire CC will not be recoverable by it as input tax . Thus, the LEP is likely to be less VAT efficient than previous practice where one or other of the Member Authorities could act as 'lead partner' for the LEP activity and continue to benefit from s33. This position is set out in HMRC's internal manual at VATGPB6200.

Accordingly , where the LEP is charged for services such as third party legal or accounting services or recharged costs by the sponsoring LAs, VAT may be incurred which is not recoverable by it.

It may be prudent to seek HMRC confirmation of the above position prior to submission of the accounts and tax return for the current period.

Kind regards

Richard

Richard Croker
Senior Consultant
for Pinsent Masons LLP