Cairngorms National Park Authority

VAT Review

November 2023

Updated March 2024

Contents

Background and Scope

Cairngorms National Park Authority ("CNPA") is a Non-Departmental Public Body which derives income from grants mainly from the Scottish Government but also the National Lottery and similar bodies.

CNPA is not currently registered for VAT (this having been confirmed by HMRC a number of years ago).

Unlike its counterparts in England and Wales, CNPA does not hold Section 33 status for VAT purposes. Section 33 status allows specified bodies to recover VAT with regard to their non-business (free of charge) activities.
Azets have been asked to carry out a review and provide guidance on the Cairngorms 2030 Programme.

Scope of our work

As set out in our proposal in September 2023 and our engagement letter of 17th October 2023, this report will review and provide guidance on:

- Potential VAT registration requirements for CNPA or any partnerships within the agreed projects
- Potential for VAT recovery on central and project costs
- Identifying risks in project agreements going forward and recommendations on how to limit these risks
- Avoiding VAT risks in contracts

We were provided with, and reviewed, the following documents:

- Board paper dated 23 June 2023 in relation to the National Lottery Heritage Horizons Fund delivery
- Cairngorms 2030; Cost Plan 2024-28
- Development Grant Notification letter
- Cairngorms 2030; Full Programme report
- Appendix D; Delivery Phase Cost Plan
- Appendix D; C2030 Cost Plan

Our views and comments are based on the information provided by CNPA and takes into account current VAT law, precedents and HMRC guidance.

Executive Summary

Based on our review of the information available to us, at this stage, we have not identified that CNPA is undertaking any taxable supplies as a result of this Programme. However, at this stage, any potential VAT risks are often unknown. VAT risks are more likely to appear at the point of agreements being drafted or difficulties arising in the projects which need to be resolved. We have not seen any project contracts (they may not exist at this time) and so we cannot comment on specific potential issues at this time. The findings below are risks that we believe (based on our review of similar organisations) CNPA may need to consider as the projects progress, although we have highlighted some potential examples based on the project descriptions in the documents provided. There is more information provided for each of these conclusions later in this paper.

- The receipt of grants by CNPA will be outside the scope of VAT.
- The NLHF agreement is a grant and therefore the funding received is outside the scope of VAT.
- CNPA is not currently registered for VAT and receipt of the NLHF funding will not create a requirement to register for VAT. However further review of the future project agreements may identify a future requirement to register. Examples of risk areas include any income generated from projects such as E-bike hire income, or work on third party land where consideration is received. Also, CNPA may have a historic requirement to register which has not been confirmed. If historic registration is required, CNPA may be liable to a late registration penalty charge from HMRC.
- As and when CNPA either makes an application for funding for the Programme or an agreement is entered into, the agreement should be reviewed in order to determine its VAT liability as CNPA may be involved in both giving and/or using grants and entering into contracts for goods/services agreements.
- We would recommend that a 'checklist' which details potential VAT risks is drafted and that each project agreement CNPA enters into is reviewed against the checklist before the agreement is signed to ensure the VAT risks are considered. Also, the checklist should be used to review any material changes to agreements or structures moving forward.
- Going forward CNPA may, by entering into collaborative agreements, create a new deemed partnership which will carry its own VAT registration and recovery issues. Such collaborative agreements should be assessed against the Checklist above.
- VAT recovery on this Programme can only occur where CNPA is registered for VAT and ultimately to the extent that CNPA undertakes taxable activities.

We would welcome the opportunity to discuss our findings and the next steps with CNPA and its Board.

Cairngorms 2030 Programme

Background

The Cairngorms 2030 Programme consists of the delivery of the following 20 projects across four themes:

1. Woodland Expansion
2. Peatland Restoration
3. Nature Recovery
4. Cairngorms Future Farming
5. Climate Resilient Catchments
6. Green Finance and Community Wealth
7. Wellbeing Economy
8. Public Health and the Outdoors
9. Dementia Activity Centre
10. Landscape and Communities
11. Effective Community Engagement
12. Climate Learning and Education
13. Climate Conscious Communities
14. Community Arts & Culture Programme
15. Community Managed Grant Scheme
16. Research and Knowledge Exchange
17. Cycle Friendly Cairngorms
18. Active Travel Communities
19. Sustainable Transport
20. Travel Behavior Change

The delivery phase will run from January 2024 to December 2028 and has been costed at £42.3 million. There are almost 20 funding partners, the largest being Peatland Action (£12 million), NLHF (almost £11 million), Sustrans Scotland (over £4 million), Scottish Forestry Grant Scheme (£4 million) and the Park Authority (£2.75 million) with a further £3 million in Park Authority and partner in kind staff cost contributions.

The projects themselves will include a mixture of giving grant support, delivery of services, construction of buildings and civil engineering and knowledge exchange.

We understand that CNPA will be the main applicant for the above (and other smaller value) funding, however these projects will be undertaken with a range of partners/contractors. Partners may provide delivery support, Match Funding, staff time and/or letters of support.

Projects include working with six pilot farms to demonstrate how a transition to net zero (or even carbon negative) farming can be delivered practically and profitably in the Cairngorms, and reducing personal car use by visitors and residents through an accessible network of e-bikes and associated infrastructure. Engaging and inspiring people to use e-bikes and other forms of bicycle as a regular mode of transport. Subcontracting can be provided, for example the Glen Fender and Dalnamien woodland schemes have been co-designed between Atholl Estate, TreeStory Ltd forestry consultants, and Scottish Forestry, with additional technical input to scheme design from the Cairngorms National Park Authority.

The scheme implementation, including fencing, ground preparation, planting and aftercare will be undertaken by TreeStory Ltd forestry consultants and their nominated sub-contractors with, where appropriate, help from Atholl Estates staff.

The staff for delivery of the projects will be employed by CNPA, Alzheimer Scotland and Sustrans Scotland. Additional staff will be provided by CNPA as an in-kind contribution. However where construction services are required to undertake a project. , CNPA does not have the staff with relevant skills to undertake this work. As a result, CNPA will be contracting with third parties to provide the relevant services. The VAT on these services will not be recoverable where they relate to ‘public good’ projects.

For projects involving larger scale construction activity – mainly the Active Communities work (Project 18) it is envisaged that CNPA will delegate responsibility for delivery of these project elements to the relevant local authority. These organisations have staff with the required skills and experience and are also the statutory transport authorities. CNPA plan to grant fund the local authority to deliver these project elements, under terms of partnership and grant agreements as this type of construction work is outside CNPA’s current experience. However, we understand that CNPA is also considering specific procurement support through the Scottish Government’s procurement shared services team.

Receipt of Grants

For VAT purposes, the receipt of a grant is outside the scope of VAT, therefore no output VAT is accounted for on receiving the funds. However, funding agreements can and do often state that they are a grant but, in reality, are actually a service level agreement/contract for services with conditions on project delivery. Determining whether an agreement is a grant or contract requires careful review of the funding agreements and terms.

Appendix 1 below, is taken from HMRC's internal guidance. It is broken down in to the following three parts:

1. Factors indicating the payment is a grant
2. Factors indicating the payment is consideration for a supply (contract)
3. Factors that are neutral

These indicators are what we and HMRC refer to when reviewing funding agreements in order to determine the correct VAT liability. While there are a list of indicators in each of the three parts, it is not the case that meeting the majority of the indicators in either part results in the agreement being a grant or contract. You need to review each of the indicators against the agreement to determine the VAT liability, however, on occasion, we may not be able to categorically confirm the VAT liability of the agreement and a ruling from HMRC may be required in those instances.

Cairngorms 2030: people and nature thriving together.

As noted previously, we were provided with a copy of the Development Grant Notification Letter issued to CNPA from the National Lottery Heritage Fund ("NLHF"). The letter states that upon assessing CNPA's application for funding, NLHF has confirmed that it. will offer a Development Grant of up to £1,715,000 towards the Development Phase of the People and Nature Thriving Together project (the title given to the Development phase of the Programme).

Having reviewed the notification letter, it is our opinion that the funding received from NLHF is a grant, and therefore should be recording by CNPA as outside the scope of VAT.

When reviewing the agreement, we referred to the most relevant indicators in Appendix 1. Please see these below with our comments in red:

Grant Indicators

- the payment was made following a grant application process run by an organisation that regularly provides outside the scope grants, such as central or local government – CNPA (and not NLHF as the funder) initiated the agreement as it submitted an application to NLHF for the funding. NLHF is an organisation that regularly provides outside the scope grants so CNPA meets this condition

- are the funders the beneficiaries of the project? To be outside the scope of VAT a grant should be freely given. In using the payment, the supplier carries out its own charitable aims and objectives with the assistance of the money which is given with no expectation of direct benefit in return. – there is no mention of NLHF receiving any goods or services from CNPA in return for the payment so this condition is met.

- the funder will not attempt to control how the money is spent beyond seeing that the funds are properly managed. Any monitoring is no more than simply ensuring the payments are appropriately spent – NLHF do not appear to control how the money is spent other than for the purposes noted in CNPA's application. This condition is met.

- the supplier will set its own targets as opposed to the funder imposing specific targets – CNPA has set its own targets/milestones as per the application. These were not set by NLHF. This condition is met.

Supply (Contract) Indicators

- who initiates the agreement? If the funder is seeking services in return for their payment then this indicates the payment is consideration for supplies made to them if the funder is the direct beneficiary of the supplies. The funder believes they are receiving something in return for the payment. – as noted above CNPA initiated the agreement as it approached NLHF for the funding.

- the contract is commercial in nature i.e. it is a legally binding contract connected to a business activity. This means looking for indicators such as penalty clauses being in place if the supplier does not fulfil their responsibilities and so is in breach of contract – there do not appear to be any penalty clauses in the funding agreement.

- each activity carried out by the funder gives rise to a specific and identifiable payment. This is an agreed sum, either a single payment or a sum per activity i.e. the more work done, the greater the payment. For this to happen there is probably a detailed recording system for timekeeping, outputs achieved etc. – there are no specific/identifiable payments linked to activity. The funding is provided as a result of the application made by CNPA and will not increase if CNPA does more than it stated in its application or decrease if the project is delivered more quickly.

As noted above, as a result of the above 'Grant' indicators being in place, and the above 'Supply' indicators not being in place, it is our belief that this funding is outside the scope of VAT.

VAT Recovery

VAT operates on the basis of individual steps in a transaction or activity. At this stage, CNPA is not registered for VAT (this point is commented on in more detail below). It cannot recover VAT on costs and the grant funding application has treated all VAT on costs as irrecoverable.

The grant received from NLHF is a subsidy to costs; it is not payment for a supply of goods or services. However, CNPA, in delivering their projects might then use those funds to generate additional income or to make supplies to third parties. If this total income exceeded the VAT registration threshold (currently £85k) in a rolling 12 month period CNPA would be required to register for VAT and it might be able to recover any VAT incurred in relation to the NLHF agreement if the funding was spent in connection with the making of other taxable supplies by CNPA. Taxable supplies can take many forms, however in the case of CNPA, this could be a contract for the hiring of equipment to third parties, supply of consultancy services to third parties, providing construction services to a third party, or for selling of tickets to an event for a consideration, Consideration can be either money or goods and services as a barter. If this were the case, then CNPA would be entitled to recover all of the VAT incurred on costs in relation to taxable (VATable) activities even if that expenditure was funded directly from the NLHF fund.

If CNPA were VAT registered and the funding is used to deliver both taxable and exempt/free-of-charge (non-business) activities, CNPA would be entitled to recover a proportion of the VAT incurred on costs. This would be determined by using a business/non-business and or partial exemption calculation.

If the funding is used wholly in relation to free-of-charge (non-business) activities, CNPA would not be entitled to recover any VAT incurred in relation to this agreement. Further information on VAT recovery and the principles of determining VAT recovery can be found in the 'VAT Recovery' section below.

Other Agreements

As the projects move forward and CNPA enters into more funding and delivery agreements, each of the agreements needs to be reviewed and the VAT liability confirmed.

It was discussed with Louise Allen, that a checklist of potential risks be drafted and used to review all of the forthcoming agreements for VAT purposes. Also, the checklist could be used to review the VAT position of an existing agreement or structure where it is materially changed. This will ensure that potential VAT risks are identified and mitigated where possible.

We would be happy to review these agreements as and when either CNPA Is drafting them to ensure that they are worded appropriately if there is no intention to make a supply of goods or services, or that any genuine supplies of goods or services are identified at the earliest opportunity.

Contracts for Services

As noted above, each agreement CNPA enters into to deliver the Cairngorms 2030 programme needs to be reviewed and the VAT position determined. These are separate from the initial grant funding agreement from NLHF and relate to how that grant funding is used.

If a delivery agreement is not a grant, we need to consider the VAT liability of the income received. Again, Appendix 1 details indicators which can help identify when an agreement is a contract for services.

If an agreement is a contract for services, the income received could be liable to zero-rate (0%), reduced-rate (5%) or standard-rate (20%) VAT, or exempt from VAT.
At this stage, we have not reviewed any agreements other than the NLHF funding, however CNPA prospectively may be engaged in the provision of construction services, consultancy, supply of staff or management of a grant fund etc. to third parties. All of these services would be liable to VAT if they are carried out for a consideration i.e. further income or under a barter agreement.

As CNPA is not currently registered for VAT, should it be engaged in any taxable supplies, it may result in it being required to register for VAT (see 'VAT Registration' section below).

By reviewing these agreements, we will be able to determine if any are liable to VAT and the potential impact this may have on CNPA.

Supplies to Partnerships

As noted below, CNPA has stated in it's Programme documents that it will be involved in collaborative agreements. These could result in a deemed partnership being created for VAT purposes were CNPA to supply any goods or services such as, but not exclusively, staff, hire of goods, consultancy to a partnership where it is a partner, for a consideration or a share of any partnership profit. This would be a supply from one legal entity (CNPA) to another (the partnership) i.e. the partner is a separate entity from the partnership and it is likely that the goods or services supplied would be taxable for VAT purposes. If CNPA is not VAT registered at the time of the supply, this would count towards CNPA's VAT registration threshold. If CNPA is registered for VAT at the time of supply, CNPA would likely have to account for 20% output VAT on the supply.

This would apply to the supply of staff or recharges for shared services.

Use of Grants/Funding

While the receipt of funding by CNPA for the Cairngorms 2030 Programme may be a grant and outside the scope of VAT, there are other VAT issues to consider in how CNPA uses the funding.

The sections below provide more detail on various points which may be applicable to CNPA moving forward with this programme.

Contracts With Others/Sub-Contracts

If CNPA were to use the funding to engage a third party to provide services to CNPA, it is likely that the third party will be required to charge VAT on their supply to CNPA. This would appear to apply to the following projects:

- Woodland Expansion – if CNPA is required to carry out the planting of the trees, we understand that this would not be undertaken by CNPA as it does not have staff with the capabilities to undertake this work
- Peatland Restoration – if CNPA is required to provide technical experts/consultants and it does not have the expertise to do this itself, we believe this would be have to be out-sourced.
- Cairngorms Future Farming – if CNPA is unable to provide/undertake carbon audits, integrated land management plans and habitat surveys, these would need to be undertaken by a third party.
- Effective Community Engagement – if CNPA does not have the skills and resources to develop the 'toolkit', we presume this would be out-sourced.
- Active Communities – if CNPA is required to carry out improvements to travel infrastructure, we understand that this would not be undertaken by CNPA as it does not have staff with the capabilities to undertake this work

The provision of construction or consultancy services by the subcontractors should be liable to standard-rate (20%) VAT. At this stage, as CNPA's VAT registration position has not been confirmed, we agree that the CNPA budget for VAT being an irrecoverable cost is correct. Even if CNPA were VAT registered, VAT on certain projects within the Programme may not entitle CNPA to VAT recovery in full for costs associated with the project. The 'VAT Recovery' section below has more details on this.

Staff

We understand that the staff for delivery of the projects will be employed by CNPA, Alzheimer Scotland and Sustrans Scotland with additional staff provided by CNPA as an in-kind contribution.

For VAT purposes, the supply of staff is a taxable supply for VAT purposes. Where another organisation supplies staff to CNPA for a consideration, standard-rate (20%) VAT would be charged by that organisation to CNPA (if that organisation is registered for VAT) and would be a taxable supply by CNPA if it supplies staff to other organisations for a consideration. If CNPA does not receive any consideration for the staff time and funds the staff cost out of the NLHF grant then no VAT is due.

Managing a Grant Fund

While reviewing the Cairngorms 2030 Programme, we found no mention of CNPA managing any grant funds on behalf of funding providers and as such this does not create an obvious taxable supply.

For future reference, if CNPA were to hold any grant funds in escrow (e.g. held a separate bank account or are designated so that the funds must be awarded to third parties and CPNA is not entitled to spend the funds on its own activities) and were to management of the distribution of those grant funds on behalf of another organisation, could create a taxable supply and the agreement would need to be reviewed to confirm its VAT liability.

Partnerships/Collaborative Working

We understand that at this stage, CNPA does not intend for any profit to arise from any collaboration agreements. If this is the case, then any collaborative agreements would not be deemed (for VAT purposes) as the creation of a new partnership entity (see below). However, we have seen with other clients in similar circumstances, that intentions can shift and the potential to generate additional income in the form of profits from these types of agreements may be questioned or discussed. The notes below detail the conditions when a partnership can be deemed to be created for VAT purposes and will allow CNPA to identify when this risk can arise.

For VAT purposes, collaborative working can pose a risk to CNPA as the partnership. may be deemed an entity in its own right and potentially require VAT registration. Without a formal partnership agreement this would not create a formal legal entity but simply a simplification for VAT only.

For VAT purposes, the agreement may result in one of the following:

Joint Ventures

The terms joint venture and consortium have no legal significance for VAT purposes. They merely denote a situation where two or more persons come together for one or more specified business ventures or transactions.
When two or more persons join together in a business enterprise or venture, their

activities may give rise to the creation of a new entity and VAT registration, or they may not (see 'JANE' section below)

HMRC's internal guidance note VATREG08300 - Entity to be registered: partnerships: definition states:

> *'A partnership is defined in the Partnership Act 1890, section 1(1) as 'the relation which subsists between persons carrying on a business in common with a view to profit'. For the purposes of the Partnership Act 1890, persons acting in partnership are collectively called 'a firm'. The terms 'partnership' and 'firm' are, to all intents and purposes, interchangeable.*
>
> *Basically put, a partnership is an unincorporated association (although individual partners may be corporate bodies) in which the agreement between the parties is such that the relationship*
>
> - *between themselves, and*
> - *between themselves and third parties*
>
> *is governed by the Partnership Act.*
>
> *It is the sum of the members that is the 'person'.'*

At the same time, HMRC (for VAT purposes) can deem a partnership to exist even where no formal partnership agreement is in place (a 'deemed partnership'). This 'deemed partnership' can be required to register for VAT independently of its partners/participants where it makes taxable supplies in excess of the VAT registration threshold.

HMRC's internal guidance note VATREG08450 - Entity to be registered: partnerships: evidence of partnership states:

> ***'The business must be carried on by two or more persons in common with a 'view to a profit'***
>
> *In other words, there must be a single business, even if that business is carried on in a number of separate divisions. If, on a true analysis, each supposed partner is carrying on a separate business, there can in law be no partnership between them.*
>
> *A partnership is the relationship resulting from a contract, either express or implied. In determining the existence of a partnership, regard must be paid to the true contract or intention of the parties as appearing from all the circumstances of the case. The 'true contract and intention' is often a matter of fact.*
>
> *A formal, written agreement is not necessary for the formation of a partnership and you will come across many partnerships, which are based on oral or 'gentlemen's' agreements. On the other hand, the existence of a formal, written agreement is not, of itself, conclusive evidence that the relationship between two or more parties constitutes a partnership.*
>
> ***Those parties must share any net profits and losses arising from the business activities***

If the terms of any agreement are such that it is technically possible for one party to the agreement to make a profit and another to make a loss (whether in the long or the short term), the relationship between those parties is not one of partnership. However, the division of profits does not have to be equal. It is possible for one partner to have a greater financial interest in the partnership than another and consequently they may receive a larger proportion of the profits.

Care should therefore be taken with any agreements CNPA enter into as they may give rise to a partnership whether that was the intention or not.

Joint Activity/Agreement Non Entity ("JANE")

While joint activities may give rise to the creation of a new entity, the do not always. If the terms of the agreement between the venturers fall short of creating a partnership, the venturers should account for output VAT on their own share or portion of the supplies made and recover input VAT on costs in respect of the joint venture under their existing VAT numbers.

If any of the venturers are not registered for VAT, they must add any taxable income to their total taxable income for the purposes of calculating their liability to VAT register. However, how this is accounted for depending on whether there is a supply of goods or services by the 'JANE':

b. Joint purchase of an article for use by the joint owners (e.g. a farm machine bought by a group of farmers)

Here the correct accounting procedure is as follows:

- *the article is supplied to one registered member or to the group (if separately registered e.g. as a syndicate) and that person may reclaim input tax, subject to the normal rules;*
- *payments made by other members to that person (the registered member or group), whether for the initial purchase of the article or its maintenance, are consideration for the right to use the article: this is a supply of services and output tax must be accounted for by the registered member or group as appropriate;*
- *if the article is eventually resold, output tax is due from whomever originally received the article - either the registered member or the registered group;*
- *payments made by the registered member or group to the other members in order to pass on the proceeds of the sale are outside the scope of VAT as a profit share.*

HMRC's internal guidance note VTAXPER55000 - Issues to consider: joint ventures and partnerships: joint supplies of services states:

When two or more parties come together to make supplies of services they will often prefer, for reasons of administrative convenience, to create an accounting chain so that the supply is invoiced by one company only. You should allow this to take place if you are sure that there is no revenue loss. The alternative is for each party to be

responsible for the supply according to the level of output which the venture stipulates it makes.

It is possible for two or more parties to make a joint supply of services, and so this alternative cannot be denied to the trader. However, there are associated revenue risks, as explained at b. below. You should thus only allow this alternative if the parties specifically request it, and then only if you are sure that the parties are truly equal participants in the venture.

Tribunal justification for the above is given in the case of Greater London Council (LON/81/341). This concerned the joint mounting of a production by the GLC, who owned the hall, advertised the event, and printed and sold the programmes; and a production company, who provided the orchestra, singers, dancers, and associated musical material. The revenue from the production was then divided equally.

The tribunal found that the parties were jointly supplying a production to the public and that therefore supplies did not take place between them.

a. Are the parties truly equal participants?
The characteristics of a true joint venture are that two or more venturers agree to act in concert, fulfilling agreed obligations and inputting resources which are later correspondingly reflected in the level of benefit which they receive when the profits of the venture are shared. It is not necessary for profits to be split on a 50/50 basis for a true joint venture to exist - but if, for example, one venturer contributes 70% of the cost of the venture, we would expect that venturer to receive a 70% share of the eventual profits, and the other venturer only 30%. Thus, in a true joint venture, all co-venturers are equal to the extent that no one venturer has control over another. You may find it useful to consult the guidance at VTAXPER74000, which gives examples of joint ventures in the area of share farming.

b. Accounting consequences
If you are satisfied that the relationship is one of truly joint participants, venturers are individually responsible for accounting for VAT according to the level of output which the venture stipulates they make. Thus if both venturers are registered for VAT they must declare output tax on the value of their proceeds from the venture under their individual registrations; but if one or more venturer is not registered (and the proceeds of the venture are not sufficient to cause registration), the proceeds accruing to that venturer will escape VAT. Similarly, the venturers will not make taxable supplies to each other where they are only fulfilling their obligations under the venture.

There are obvious revenue risks in this situation, which emphasise the importance of only allowing this practice if the parties specifically request it; and then only if you are certain that a true joint venture exists.

As you can seem there are varying VAT procedure to follow under a JANE arrangement. Should CNPA either enter into a JANE or find itself in a JANE, we would recommend that the VAT requirements of CNPA are confirmed.

VAT Registration

CNPA VAT Registration

In our VAT health check report from April 2021, we highlighted that there was a risk that CNPA may have historically breached the VAT registration threshold (currently £85,000). We understand further analysis and review of CNPA's income at that time was not undertaken and this historic point has not been determined.

As noted above, it is believed that all of the agreements CNPA enters into will be grants intended to subsidise costs (and outside the scope of VAT), however this may change moving forward and there is a possibility that some of the income CNPA will derive as part of the Cairngorms 2030 Programme with the exclusion of the NLHP funds may be liable to VAT. If it were, this taxable income would count towards its taxable income for the purposes of VAT registration. The income from any one of these agreements on their own, or a combination of multiple agreements and historic income may push CNPA over the threshold for VAT registration.

An entity making no taxable supplies and carrying out projects solely supported by grant funding or donations, would not be eligible to register for VAT and therefore is not able to recover any VAT.

An entity making taxable supplies must notify HMRC if at the end of any month the value of taxable supplies in the last 12 months (or less) has exceeded the VAT registration threshold (currently £85,000). The requirement to register for VAT must be notified to HMRC within 30 days of the end of the month that this occurred. HMRC must also be notified of an entity's requirement to register for VAT if it is expected that taxable supplies in the next 30-day period alone will exceed the VAT registration threshold.

If you require, we can review the Cairngorm's 2030 Programme agreements. We will consider the VAT registration position of CNPA in light of the VAT liability of each agreement and communicate this with CNPA. Should VAT registration be required, we can assist CNPA with all aspects of notifying HMRC of this requirement.

If CNPA were to become VAT registered, it would be entitled to recover some (but likely not all) of the VAT it incurs. The 'VAT Registration' section below provides further information on this.

Partnership Registrations

As noted above, the agreements entered into under the Cairngorm's 2030 Programme, may create deemed partnerships between CNPA and the other organisations for VAT purposes if there is any intention to generate a profit. If a new deemed partnership is created, its VAT registration position also needs to be reviewed and determined in its own right. This would be separate from CNPA's own VAT registration position.

VAT Recovery

CNPA

VAT incurred on expenditure (by a VAT registered business or charity) is recoverable as follows:

- VAT wholly attributable to taxable activities is recoverable in full.
- VAT wholly attributable to exempt or non-business activities is blocked from recovery (subject to de-minimis limits).
- VAT on expenditure that is attributable to a mixture of activities is recoverable in part.

Where an organisation receives a mixture of taxable, exempt and/or non-business income it will be required to perform a non-business apportionment and/or a partial exemption calculation to confirm the value of recoverable VAT.

There is no prescribed method for performing a business/non-business calculation. Common methods of apportionment are based on:

- Income
- Expenditure
- Floor area
- Staff headcount

Turning to the partial exemption calculation, the standard method (which is based on income) can be used to calculate the value recoverable VAT without HMRC's approval. However, with HMRC's approval a 'special' method can be used where it can be demonstrated that the standard method would not provide an accurate reflection of the use of the expenditure.

Special partial exemption calculations are often based on the following:

- Expenditure
- Floor area
- Staff head count
- Transactions

This is explained in greater detail at Appendix 1.

At this stage, we have not reviewed the individual Cairngorm 2030 Programme project agreements and so we cannot confirm whether or not CNPA will have a requirement to register for VAT or if it has a historic requirement to register as previously highlighted.

Ultimately, in order for CNPA to be able to recover any VAT incurred on the Cairngorms 2030 Programme, it would have to be undertaking taxable activities and be registered for VAT. It may be that some projects might include taxable activity, and some might not. In which case CNPA would be entitled to full VAT recovery on costs which directly relate to projects which are fully taxable. Where a project is not taxable, there would be no VAT

recovery on any direct costs. For costs which are not directly attributable to a specific project, CNPA may be entitled to recover an element of the VAT incurred on costs (e.g., overhead costs) if it is VAT registered. This is what a business/non-business and partial exemption calculation is there to determine.

We would assist CNPA in determining the best calculation that could be undertaken by CNPA in order to maximise its VAT recovery.

Historic Registration

If CNPA has a historic requirement, HMRC can issue a penalty for a failure to notify them of the VAT registration requirement. Any penalty is based on behaviours and broken down as follows:

Type of behaviour	Unprompted or prompted disclosure	Penalty range
Non-deliberate	Prompted — within 12 months of tax being due	0% to 30%
Non-deliberate	Unprompted — 12 months or more after tax was due	10% to 30%
Non-deliberate	Prompted — within 12 months of tax being due	10% to 30%
Non-deliberate	Prompted — 12 months or more after tax was due	20% to 30%
Deliberate	Unprompted	20% to 70%
Deliberate	Prompted	35% to 70%
Deliberate and concealed	Unprompted	30% to 100%
Deliberate and concealed	Prompted	50% to 100%

If you tell HMRC about a failure to notify before you had any reason to believe that HMRC were about to find it, this an ‘unprompted disclosure’. If you tell HMRC about a failure at any other time, it is a ‘prompted disclosure’.

However, HMRC guidance does state they will not charge a penalty for a failure to notify if all of the following apply:

- you have a reasonable excuse for the failure
- the failure was not deliberate
- you told us without unreasonable delay after your reasonable excuse ended

Due to the potential of penalties which are based on time and whether HMRC identify a late registration, we would recommend that the historic VAT registration position of CNPA be reviewed and confirmed.

Partnerships

The VAT recovery position for any potential partnerships (actual or deemed) is based on the same principles as noted above under ‘CNPA’.

Appendix 1 – Grants vs SLA Indicators

HMRC guidance on factors indicating the payment is a grant

The following factors are taken from precedent cases. They are not in any particular order, all factors should be considered when making a decision. The more there are in your situation, the more likely it is that the payment is outside the scope of VAT.

The factors to consider are:

- the payment was made following a grant application process run by an organisation that regularly provides outside the scope grants, such as central or local government
- are the funders the beneficiaries of the project? To be outside the scope of VAT a grant should be freely given. In using the payment, the supplier carries out its own charitable aims and objectives with the assistance of the money which is given with no expectation of direct benefit in return
- the funder will not attempt to control how the money is spent beyond seeing that the funds are properly managed. Any monitoring is no more than simply ensuring the payments are appropriately spent
- the supplier will set its own targets as opposed to the funder imposing specific targets
- the payments are not treated as trading income or expenditure in the accounts of either party
- if the funding is withdrawn there is no legal redress for the supplier to have the payment reinstated
- funding is drawn down by the supplier as a reimbursement of expenditure incurred, rather than an advance payment for services. Alternatively, there may be a ‘deficit funding’ arrangement whereby the funder agrees to plug any funding gaps
- the funding is provided under a statutory provision that empowers the funder to make a grant. This would be mainly relevant if the funder is a Government department or local authority
- there is a ‘clawback’ provision within the agreement. Funders use this method to reclaim their funding in circumstances such as where not all the money was spent or if the terms of the agreement were not complied with. In contrast, a contract for a supply should not contain a ‘clawback’ clause as there is no automatic right to reclaim any money. The money is consideration for the supply and the solution for reclaiming the payment in any subsequent breach of contract is to sue for damages.

Appendix 1 – Grants vs SLA Indicators (Contd.)

HMRC guidance on factors indicating the payment is consideration for a supply

The following factors are taken from precedent cases. They are not presented in any particular order, all factors should be considered when making a decision. The more there are in your situation, the more likely it is that the payment is consideration for a supply. The factors to consider are:

- who initiates the agreement? If the funder is seeking services in return for their payment then this indicates the payment is consideration for supplies made to them if the funder is the direct beneficiary of the supplies. The funder believes they are receiving something in return for the payment.
- the supplier undertakes outsourced activities on behalf of the funder where the services provided are ones ordinarily provided by the funder so the supplier is acting as a subcontractor. Examples include the provision of functions ordinarily undertaken by local authorities that they have a statutory duty to perform and would face sanctions if they did not happen.
- the contract is commercial in nature i.e. it is a legally binding contract connected to a business activity. This means looking for indicators such as penalty clauses being in place if the supplier does not fulfil their responsibilities and so is in breach of contract.
- the supplies are undertaken as an economic activity. It is not necessary for the supplier to have a profit motive, but the type of supplies should have the potential to make a profit.
- the relationship between the funder and supplier will be at ‘arms length’ and there will be an absence of control from the funder in the supplier’s decision making process.
- the payments made by the funder to the supplier are made specifically for the supplier to provide particular services to its clients. The fact that the funder does not know at the time the service is provided the identity of the client or the even the specific service which is being provided is not relevant.
- each activity carried out by the funder gives rise to a specific and identifiable payment. This is an agreed sum, either a single payment or a sum per activity i.e. the more work done, the greater the payment. For this to happen there is probably a detailed recording system for timekeeping, outputs achieved etc.
- the funder will attempt to control how the money is spent, maybe imposing specific targets in terms of quantity, quality, timeframes etc. Any monitoring is more than simply ensuring the payments are spent properly and is to ensure that specific supplies are made.
- if the funding is withdrawn there is legal redress for the supplier to have the payment reinstated or claim compensation
- the payments are treated as trading income or expenditure in the accounts of either party.

Appendix 1 – Grants vs SLA Indicators (Contd.)

HMRC guidance on factors that are neutral

The following factors are taken from precedent cases. The court decisions referring to these factors regarded them as neutral, so their presence in an agreement generally does not indicate either way whether the payment is an outside the scope grant or consideration.

The neutral factors are:

- the payment is described as a grant in the contract and correspondence. Whilst the wording of a contract is important, what the payment is called does not determine its VAT treatment.
- the level of detail within the contract/agreement does not point in either direction, i.e. it is wrong to say that the more detail there is, the more likely there is a contract for a supply the supplier is obliged to provide reports and information to the funder. This is not an indicator either way as a condition in the agreement to report on how the payments are used will be required either to confirm supplies were made or in a grant situation act as good housekeeping to ensure the money is spent for its intended purpose.
- the supplier's activities and the number of projects undertaken are influenced by the payment i.e. they would be significantly curtailed in the event of a withdrawal or reduction in funding. Although this could indicate there was a supply made to the funder, you must still look at whether a supply is actually made to them, as a withdrawal of a grant may equally mean a reduction in service provision.

Appendix 2 – Additional Notes on Recovery of VAT Incurred on Expenditure

Recovering VAT incurred on business costs and expenses should be a relatively straightforward exercise if a business only makes taxable supplies of goods and services. However, when a business makes a mix of taxable and exempt activities, it can be more complicated.

Businesses in this position need to look at whether or not they can reclaim all of the VAT incurred on purchase invoices received from its suppliers in the VAT accounting return period.

We have set out below some general background information and guidance on Partial Exemption and associated VAT recovery.

What to do first?

The business should confirm the VAT status of its income/activities. This will help determine whether it can recover all, part or none of the VAT it incurs on expenditure.

What about VAT charged on purchase invoices?

The business also needs to make sure that its suppliers have charged VAT correctly. It cannot reclaim VAT that is incorrectly charged. It is important to check there are no mistakes on purchase invoices. For instance, that suppliers have charged VAT on zero rated or exempt supplies or the correct amount of VAT has been properly charged. The business should also look at ways of avoiding VAT on expenditure for example on publications and certain building works. The risk of the business incurring irrecoverable VAT on purchases can be reduced if a supplier avoids charging VAT in the first place. This is especially important if the supplies are used to carry out exempt activities.

When is VAT recoverable?

Where a business receives a VAT invoice from a supplier it is entitled to recover the VAT incurred on goods or services that can be linked to standard rated, reduced rate and zero-rated (taxable) activities.

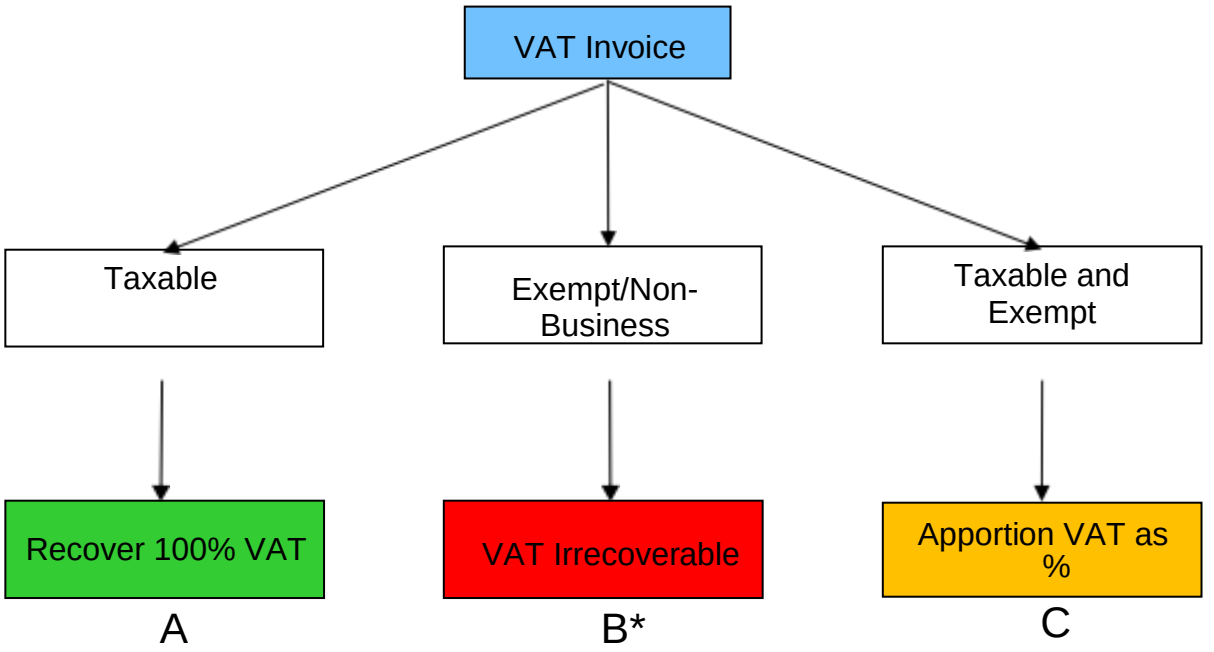
How to do that?

The business must decide if the VAT is a cost incurred in making taxable, reduced rate, zero rate, exempt or non-business supplies. In order to do that the business should list all the supplies or sales that it makes in the course of everyday business.

- Taxable supplies - are those which are subject to VAT at the zero rate (0%), reduced rate (5%) or standard rate (20%).
- Exempt supplies - supplies or sales which are within the scope of VAT but have been given exemption status.

Before the business considers whether it is able to recover all VAT incurred in the accounting period it should identify and disallow any VAT incurred on expenditure that is attributable to supplies which are non-business.

It can then move on to allocate each VAT invoice in line with the example shown below:



*subject to partial exemption de-minimis rules

How to allocate VAT charged on standard or reduced rated costs and expenses?

Wherever possible, the business needs to allocate VAT on expenses to income or activities. For example, VAT on stock for resale allocated to standard rated sales. The VAT incurred should be allocated as follows:

a. VAT on expenses solely allocated to taxable income or activities. The VAT incurred on such expenses can be reclaimed in full.
b. VAT on expenses solely allocated to non-business or exempt income or activities. This VAT should be blocked from recovery. The VAT attributable to exempt supplies should be reviewed at the year end, as it may be recovered where it is below certain limits. See d. below.
c. VAT that cannot be allocated to any one source of income or activity. A portion of this VAT will be recoverable. The amount to be recovered will need to be calculated using a method that is acceptable to HMRC. The standard method of calculation is based on income and this basis of calculation should be used unless a 'special' method is specifically agreed with HMRC.
d. There is a "de-minimis" level of on average £625 a month and 50% of the total input tax for the period. In simple terms, it means that if exempt input tax is less than the tests for this level then it is regarded as insignificant and can be recovered in full without any further calculation.

e. At the end of the VAT year, the business must review the calculation it made for each accounting period. This is called the annual adjustment or review. The annual review of the figures will give the business an opportunity to look again at any VAT that became irrecoverable during a period. It may well be the case that although the business is unable to recover VAT in the period, when the “de-minimis” test is applied at the annual review, it finds that on an annual basis, the VAT is actually recoverable.