

VAT RETURNS

THE ADVICE

The advice from Devon Association of Local Councils expert VAT [REDACTED] is as follows:

The right to recover VAT

The first point to make very clear is that a charity cannot use the special status of a Parish Council to reclaim VAT on its own expenditure. Section 33 of the VAT Act only permits a parish council to reclaim VAT that it has actually incurred.

Custodian Trustee

The second important point is that HMRC does not accept a custodian trustee council as the owner of a building for VAT purposes. This is explicitly set out in [VAT Notice 749 Local authorities and similar bodies section 6.5](#) (our highlights):

“6.5 VAT refunds on goods and services you buy using money from trust funds

You can get a VAT refund but only when you act as sole trustee of a trust, for example, a village hall.

For your claim to be valid:

- you must be acting as sole managing trustee without payment*
- the activities of the trust must be so closely related to your own functions as an authority, that you cannot easily distinguish between them*

the claim must relate to the non-business activities of the trust

But if:

- we’re satisfied that recovery of VAT will create anomalies, then we may restrict it*
- **you’re a custodian trustee whose role is simply to hold the property of the trust, then you cannot recover the VAT you have incurred, unless you’re also sole managing trustee”***

This point is reiterated in HMRC’s internal guidance [VATGPB4450](#):

“In acting as trustee the body may be what is known as a ‘custodian’ trustee, where its function is simply to hold the property of the trust. Day-to-day management is usually in the hands of a management committee that is comprised of other trustees. Where a body is the sole custodian trustee it is not able to recover any VAT under section 33 unless it is also the sole managing trustee.”

It follows that all sections of HMRC guidance that are aimed at councils that own a village hall do not apply in this case – including the section from VATGPG8375 cited by the charity.

It’s also worth noting that the guidance in VATGPG8375 would also not apply even if the council was a sole managing trustee (which it is not). This is because renting out a hall is a VAT-exempt business activity and even a sole managing trustee council cannot reclaim VAT relating to the charity’s business activities.

“Donated” funds

Again, HMRC does not allow councils to be used as a conduit for third parties to reclaim VAT. In order to safeguard against this, they have set out specific rules in section 6 of VAT Notice 749.

Section 6.3 relates to funds ‘donated’ for a specific purpose. The basic rules are that the council must place an order, receive the supply, retain ownership of goods and services, use them for the council’s own non-business purposes, and receive and invoice made out to it. The rule about ownership of goods and service is not met in this case.

A further rule is set out in 6.4 which states:

6.4 Examples of when VAT can and cannot be recovered

You will not be able to meet the requirements in [paragraph 6.3](#), if the person giving you the money does so only on condition that:

- you give them something or do something for them in return
- another person benefits as a direct result of the payment.

The circumstances described clearly fall foul of this rule.

Of course, 'donation' is the wrong word to use when a person gives money to another person and requires them to do something in return.

The worst-case scenario, where the council accepted payments from the charity or cricket club, is that HMRC would rule that the council is making a taxable supply of services/goods – resulting in the council having to register for VAT (if it is not already) and charge VAT to the third parties. This would render the whole scheme pointless, and potentially expensive for the council.

Assets

As custodian trustee, the council merely holds legal title on behalf of the charity. The assets do not belong to the council and it is not obliged to insure them. They should be included in the council's asset register, but at zero value (not £1) and listed "Charitable assets held as trustee of charity no.", see The Practitioners Guide (2022) paragraph 5.115.

Error correction

Many councils face pressure from closely-related community organisations to provide assistance in the form of reclaiming their VAT. Concerns raised by clerks about these cases are one of the most common questions put to us. The benefit of being able to reclaim VAT cannot be shared – and the council must always ensure that it meets all of the conditions set out by HMRC in its guidance – mainly Notice 749 – to ensure that it is not overstepping its legal boundaries.

In this case, the council will have to review all the VAT that it has reclaimed on behalf of the village hall and related parties and make a repayment to HMRC. The maximum period for repayments is 4 years – so the council is obliged to go back to November 2018.

If the council is registered for VAT, guidance on making corrections is in [VAT Notice 700/45](#). If it is unregistered, it will have to adjust its next VAT126 form to repay the errors.

THE RECOMMENDATION

Given the above information, I would have to recommend that the Parish Council follow the advice of the DALC's expert and repay any amounts reclaimed since November 2018.

The Village Hall and Recreation Ground accountant has at the time of writing this document, not to my knowledge, provided written evidence of his view provided by the Village Hall and Recreation Ground committee.

THE IMPLICATION

From reviewing the financial information available to me from the website, the major VAT reimbursements were received in 2017 and 2018.

I have asked the previous Clerk for the VAT returns submitted, bank statements and invoices but as of 30/11/22 no response had been received.

Should the information not be forthcoming, it should be possible to:

- a) Write to HMRC to see if they can send a copy of returns for 2017/18 to 2021/22.
- b) Go into the bank and ask for bank statements from January 2018 to March 2019
- c) Approach companies for invoices which might be relevant

Information from Parish Council's past accounts indicate:

YEAR	VAT EXPENDITURE listed in PC accounts	VAT INCOME (assuming from HMRC)	SHOWN AS A SEPARATE RECEIPT
2014/15	294.00	11,231.87	
2015/16	1,429.97	0.00	
2016/17	18,499.52	22,156.86	
2017/18	19,094.35	23,162.29	17,705.80*
2018/19	2,464.31	0.00	
2019/20	455.54	10,266.31	
2020/21	1,501.22	0.00	
2021/22	574.46	0.00	
	44,313.37	66,817.33	17,705.80*
2022/23	To be assessed	9882.05	

17,705.80* given as private loan re Play Park VAT payment (4 instalments of £4,426.45). See table under 2017/18.

Differential between VAT INCOME and VAT EXPENDITURE = £22,503.96.

2014/15

I have no supporting evidence for 2014/15 the amounts.

2015/2016

There is supporting expenditure in the form of cheques written for items exceeding £100 to support a VAT reclaimable sum of £1429.97.

Grant Thornton
RW Gale
Networld Sports
Tree Wardens expenses
Four Seasons
Westward Joinery

2016/17

There is supporting expenditure in the form of cheques written for items exceeding £100 to support Parish Council VAT to the sum of £387.72.

In addition, a cheque was written for £18,111.80 recorded as Safe & Sound Playgroups (MUGA) VAT. Given that this was the amount reclaimed, there does not appear to be any amount paid by the Parish Council that would have provided for a VAT reclaim of this sum of money.

It would appear that VAT refund amounts were made to:

SPVH & RG Charity	£ 455.90
F Harding	£1559.49

2017/18

There is supporting expenditure in the form of cheques written for items exceeding £100 that are shown to make up the amount of £19,094.35 but I do not understand the two transactions below.

2 x £8,852.80 made to Anon (refund of loan re VAT/Play Park payments) - £17705.80*	Not shown in 2017/18 VAT payments but is shown in expenditure
4 x £6,378.70 made to Earth Wrights (play park payments)	Shown as 4 x £4,426.45 in VAT payments and 4 x £1,952.25 in Play Park expenditure - £17,705.80*

The £17,705.80 appears in the £19094.35.

It would appear that a VAT refund amounts was made to:

SPVH & RG Charity	£ 4,588.21
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2018/19

There is no VAT calculation given in the accounts.

Supporting expenditure in the form of cheques written for items exceeding £100 that would have a VAT element include:

Defibrillators 2 x £825.00	
DALC membership £278.97	
Play Park maintenance £566.00	
Play Park furniture £2899.20	
J V Lee Electrical £1637.30	
Grass cutting £1250.83	
Memorial seat purchase £649.99	
First Service (Tennis Club) £5331.60	£14263.89

which would account for the £2464.31 shown in the accounts.

2019/20

There is no VAT calculation given in the accounts,

There is supporting expenditure in the form of cheques written for items exceeding £100 that are likely to show the amount of £455.54.

The following VAT refund payments were made:

VAT payment to VH Charity	£1,277.65	
VAT payment to VH Charity	£ 791.84	
VAT payment to Tennis Club	£6,352.00	£8421.49

2020/21

There is no VAT calculation given in the accounts.

The following payments were made:

MAT Electrics	£4,733.18	
Ground works	£ 456.00	
Defibrillator purchase	£1,637.03	
Grass cutting	£1,471.24	
Tree works	£ 400.00	£8697.45

Which with other sundries could provide for a VAT figure of £1501.22.

2021/22

There is no VAT calculation given in the accounts.

However, the Parish Council requested refund of £574.46 would seem to be in line with the payments made over £100.

Calculation for HMRC going back to November 2018

YEAR	VAT EXPENDITURE listed in PC accounts	VAT INCOME (Assuming from HMRC)	VAT amount to Parish Council	VAT refund payments paid or to be paid	
2018/19	2,464.31	0.00			
2019/20	455.54	10,266.31	2,919.85	8,421.49	11,341.34
2020/21	1,501.22	0.00			
2021/22	574.46	0.00			
2022/23	To be assessed	9,882.05	2,075.68	7,806.37	9,882.05
	4,995.35	20,148.36	4,995.53	16,227.86	21,223.39

Given that £7,806.37 is sitting in the account then the actual amount required to be paid back would be £8,421.49.

At present, I cannot explain the difference between what appears to be VAT claimed and VAT received since 2014/15 or the difference of £1,075.03 in VAT income and the amount paid in refunds.