HWFisher

M E M O

DATE	13th July 2024
TO	Umang Gandecha
FROM	Gerry Myton
REF:	Londonist DMC Limited – VAT Liability Short Term Lets

HW Fisher LLP (HWF) have been asked by Umang Gandecha on behalf of Londonist DMC Limited (LDMCL) to advise in writing on the VAT liability of short-term lets. To date, LDMCL has treated lets as VAT exempt.

Background

LDMCL acquires residential units within larger developments from major players in the student accommodation arena such as Unite. LDMCL offers students the option to agree a license for periods from 2-52 weeks. Most lets are for circa 39 weeks and those are certainly VAT exempt; it is the lettings within the residual 13-week period that gives rise for concern.

LDMCL has noted to HWF that this area is "grey" for VAT purposes and HWF agrees. It should be noted that some operators known to HWF charge VAT that may be for individual convenience (to obtain some VAT recovery) or due to matters which make their type of accommodation fall within the "similar establishment" rules.

HWF have for the purposes of this review considered the VAT issues around:

1. Student accommodation
2. Short-stay accommodation
3. Similar establishment rules under Item 1(d), Group 1, Schedule 9, VAT Act 1994
4. Serviced accommodation and similar – the overlap from Item 1(d) to Item 1(e), Group 1, Schedule 9, VAT Act 1994

In addition, we have reviewed HMRC's guidance and the abundance of case law; some favourable, some not. The cases we have considered include:

- Denman College
- Urdd Gobaith Cymru (aka Newport College)
- J McMurray (a Governor of Allen Hall)
- Morisons' Academy Boarding Houses Association
- Soka Gakkai International UK

- International Student House
- Acorn Management Services Ltd
- The Principal & Fellows of Lady Margaret Hall
- Fenwood Developments
- Capernwray Missionary Fellowship of Torchbearers
- 47 Park Street
- BLS1 Ltd v Isle of Man Treasury
- Realreed Ltd

These cases cover all aspects of 1-4 above.

In addition, HWF have reviewed the Terms & Conditions per your website and the License Agreement and note that the License Agreement is identical irrespective of the length of stay.

VAT Liability

Based on our review, we believe that the supply of the short-term lets are VAT exempt. We do not intend to provide an analysis of each case as the technical note would be far too long but instead, summarise below the factors that lead to that conclusion:

1. T&C's

   2.1 We let the Room to you for the length of your stay and it may only be used for the Permitted Use of **personal residence** (emphasis added) along with all the other rights in these T&Cs. A licence to occupy will only be granted to the you as a tenancy upon receipt of the Confirmation of Enrolment Letter after you have paid the deposit and first instalment of Licence Fee within the Decision-Making Period and this Agreement electronically signed by you.

2. You may be obligated to follow a planning consent that the building is used solely for students and that is passed down to LDMCL in your leases with Unite and similar. Clause 2.1.1 of the Vita agreement would appear to indicate such a restriction.

3. The booking process allows only persons attending specific third level educational establishments to book rooms.

4. The buildings in our opinion would not be similar establishments to hotels as the facilities provided would fall short of the expectations of travellers using hotel or even serviced accommodation. I would also draw a distinction between what LDMCL are providing and lettings to conference delegates, tourists, etc which are likely to require more active management, and a higher level of service. Overall, 'similar establishment' is probably primarily a matter of impression and atmosphere – of what the accommodation looks and feels like and to this this end, the photographs on LDMCL's website does not suggest hotel or similar accommodation.

5. The marketing is done primarily via internet sites directed towards students and not on websites attracting the tourist type traveller. We would caution strongly against the use of Airbnb as case law noted above might cause some difficulty if HMRC reviewed matters.