



# Agency Agreements in Leisure

22 January 2025



- **Presenting today**

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## Agency model – context and market view



- Context to growth of the agency model in public leisure sector
- What we are seeing happen in the market;
  - Local authorities
    - Existing contacts and new tenders
  - Operators
  - Sport England



## Agency model – context and market view



- Some operators have invested into researching into it more than others
- Impact on typical leisure operating contracts
  - Trading risk / can I still make decision about how to manage the business for example pricing
  - Practical considerations of implementation
  - Who benefits from financial savings
  - What is the sector benefit?



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## Local Authority Leisure Services

Richard Strevens – Associate  
Director

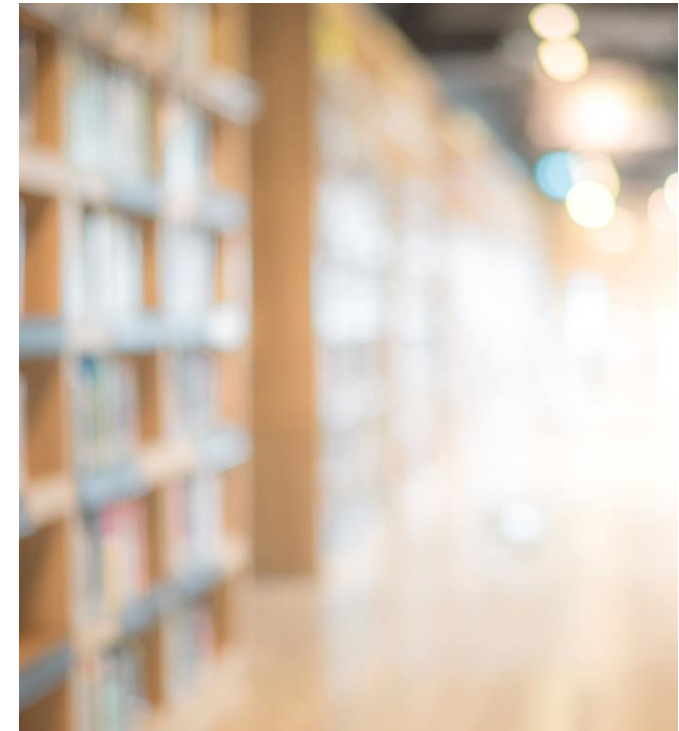
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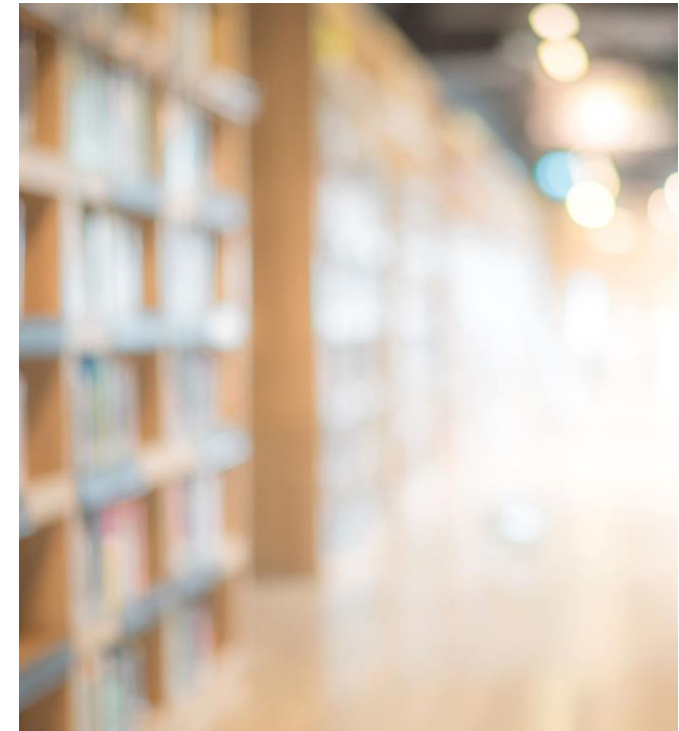
# History of VAT and Local Authority Leisure

- > Historically, leisure services were standard-rated
- > Exemption for sporting services (leisure services) was introduced in 1994 for non-profit making bodies (an EU requirement)
- > Following representations from local authorities, they were expressly excluded from the exemption



# History of VAT and Local Authority Leisure

- > Following litigation (Chelmsford), HMRC announced in March 2023 non-business treatment for some supplies
- > In November 2023, HMRC's guidance changed to include more services as non-business



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## Outsourcing





# Outsourcing - History

## The VAT reasons for doing it

- Typical leisure centres had both standard rated leisure services and VAT-exempt services (classes, room hire, block bookings)
- Local authorities can reclaim
  - all VAT costs relating to taxable and non business activities
  - only a limited amount of VAT relating to VAT-exempt activities



# Outsourcing - History

## The VAT reasons for doing it

- > Can outsource VAT-exempt activities to protect the local authority's VAT recovery position
- > Removes the VAT recovery risk for capital investment



# Outsourcing - Concept

- > The Operator is acting as Principal in making supplies of leisure services
- > The Operator's status (type of entity it is) will determine the VAT liability of its supplies



# Outsourcing - Concept

- > Most take the form of Non-Profit Distributing Organisations (“NPDO”)
- > An NPDO contractor’s supplies of admission to leisure facilities are generally VAT-exempt



# Outsourcing

- > A typical outsourcing arrangement will be contained within two documents
  - > A premises lease
  - > A management contract



# Outsourcing - The Lease

- > The grant of occupational rights under a lease in return for consideration is a VAT-exempt business supply (unless the option to tax applies)
- > All VAT costs on the premises-related costs would affect the VAT recovery position
- > To protect the local authority's VAT recovery position, the grant of the lease must be a non-business or taxable supply



# Outsourcing - The Lease

- > To be a non-business supply, the local authority must not receive “consideration” for the grant of occupational rights
- > Consideration means payment in any form and includes monetary payments such as premiums, rent, services charges, and insurance rent
- > HMRC accepts that a peppercorn or £1 per annum rent is not consideration



# Outsourcing - Management Contract

- > This sets out the service specification and the contract price and the capacity in which the Operator makes services available to the public
- > It is vital that the Operator delivers the services to the public in its own name (as principal)
- > HMRC accepted that the Operator could act as agent, but there was no VAT benefit for the local authority





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## Outsourcing - Agency Model



# Agency Model - A Type of Insourcing

- > If a local authority has outsourced, the agency model is a type of insourcing
- > The agency model reverses the principles of traditional outsourcing
- > The local authority continues to makes the supplies of leisure services



# Agency Model

- > The Operator acts as the local authority's agent in delivering the services (and goods)
- > In principle, the agency arrangement can cover all or just some activities



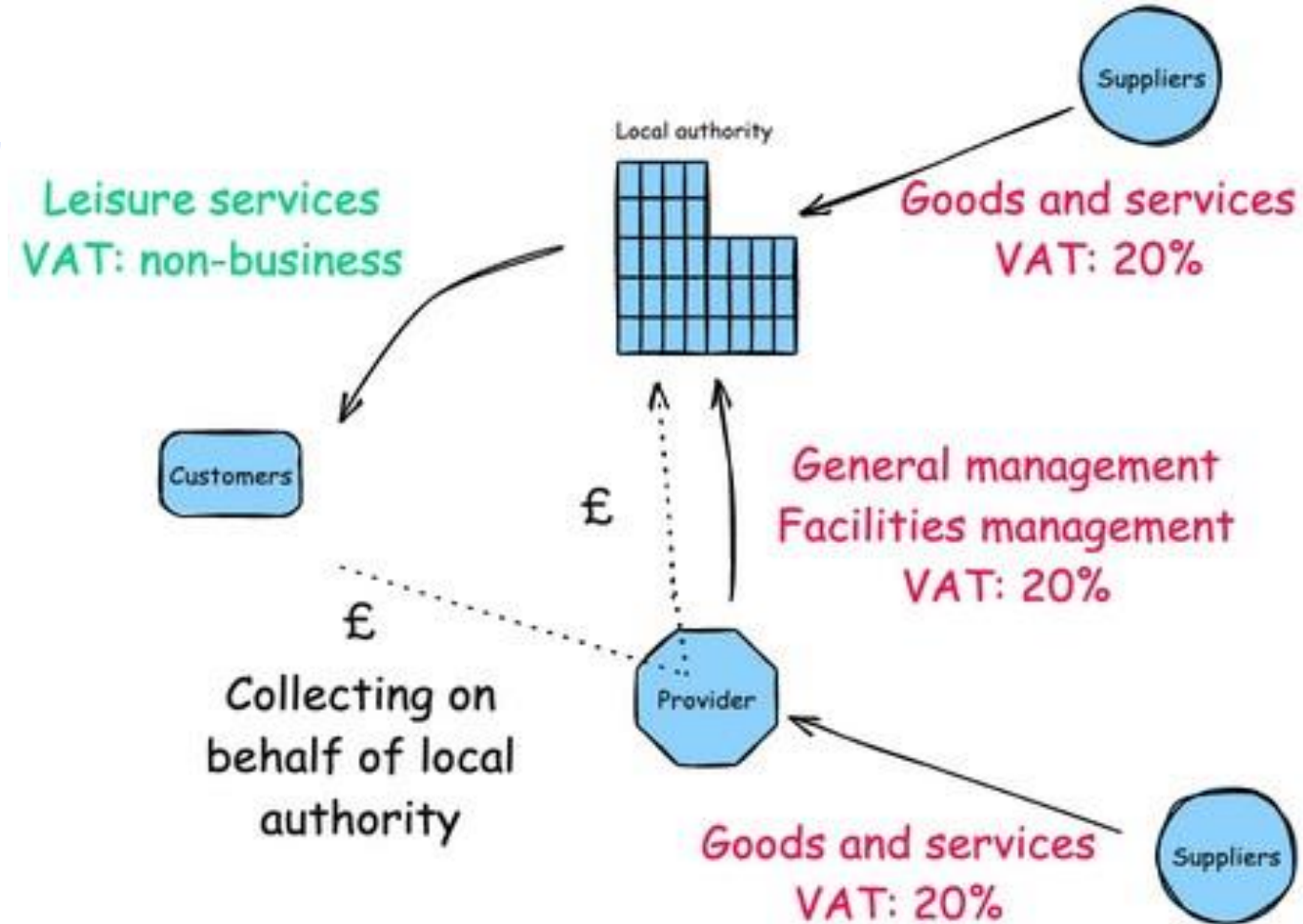
# Agency Model - Concept

- > Operator collects customer income on behalf of the local authority
- > Income retains non-business treatment
- > Operator makes a standard-rated service to the local authority - management of the leisure facilities and services



# Agency Model

- > Local authority reclaims VAT charged to it by the Operator and suppliers
- > The Operator reclaims VAT charged to it by suppliers



# Agency Model - Concept

- > The Agency model already operates in local authorities
  - > Outsourced school catering
  - > Bulky waste collection
  - > Commercial property estate management services



# Agency Model - Risks

## VAT recovery for local authority

- > What (if any) VAT-exempt supplies will remain?
- > What headroom remains for recovering VAT costs related to VAT-exempt activities
- > Does the local authority need to take steps to reduce VAT-exempt supplies?
- > What about the Capital Goods Scheme ("CGS")?



# Agency Model - Risks

## Capital Goods Scheme

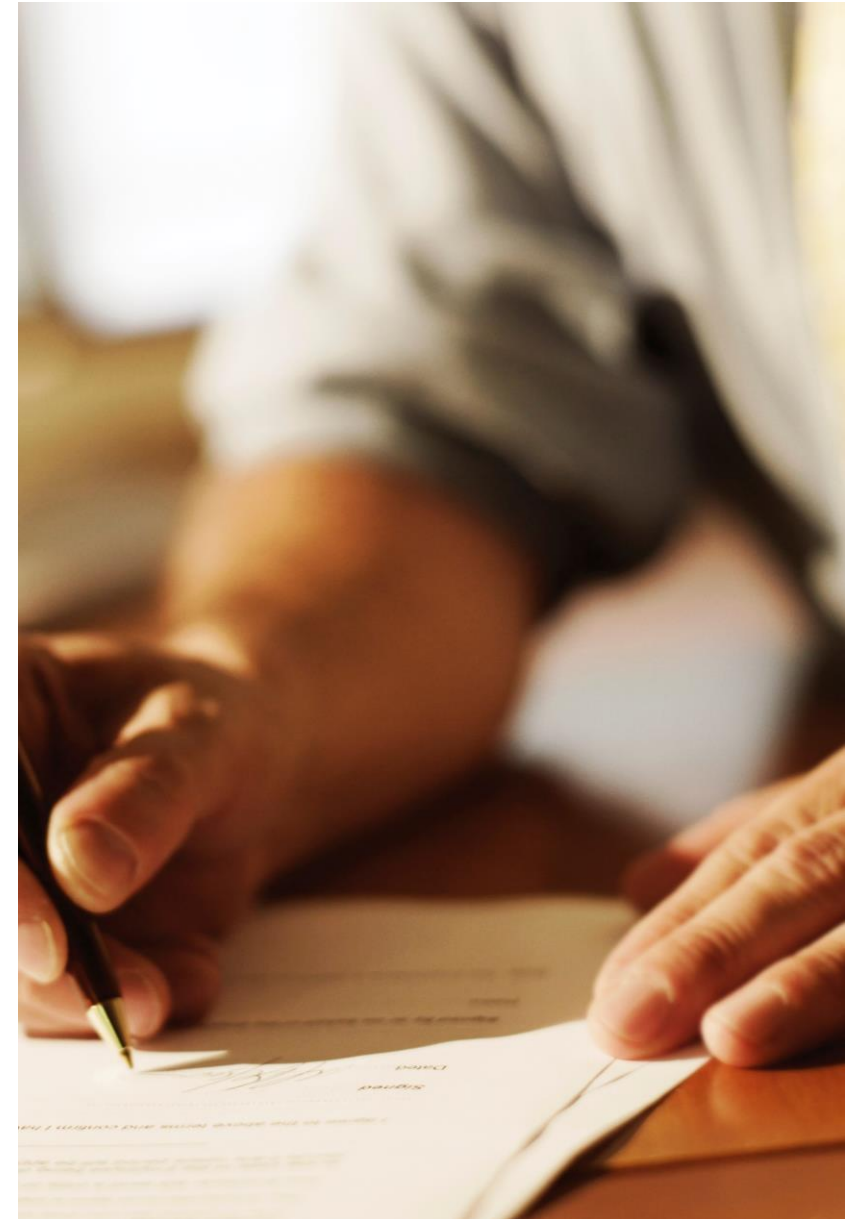
- > Where a local authority
  - > reclaims VAT on capital costs relating to taxable or non-business activities; and
  - > within 10 years the activities change to VAT-exempt, some of the VAT originally reclaimed might need to be repaid





# Agency Model - Due Diligence

- > Review proposals from the Operator
- > Analyse remaining VAT-exempt supplies from facilities and the effect on partial exemption and CGS
- > Verify Operator savings?

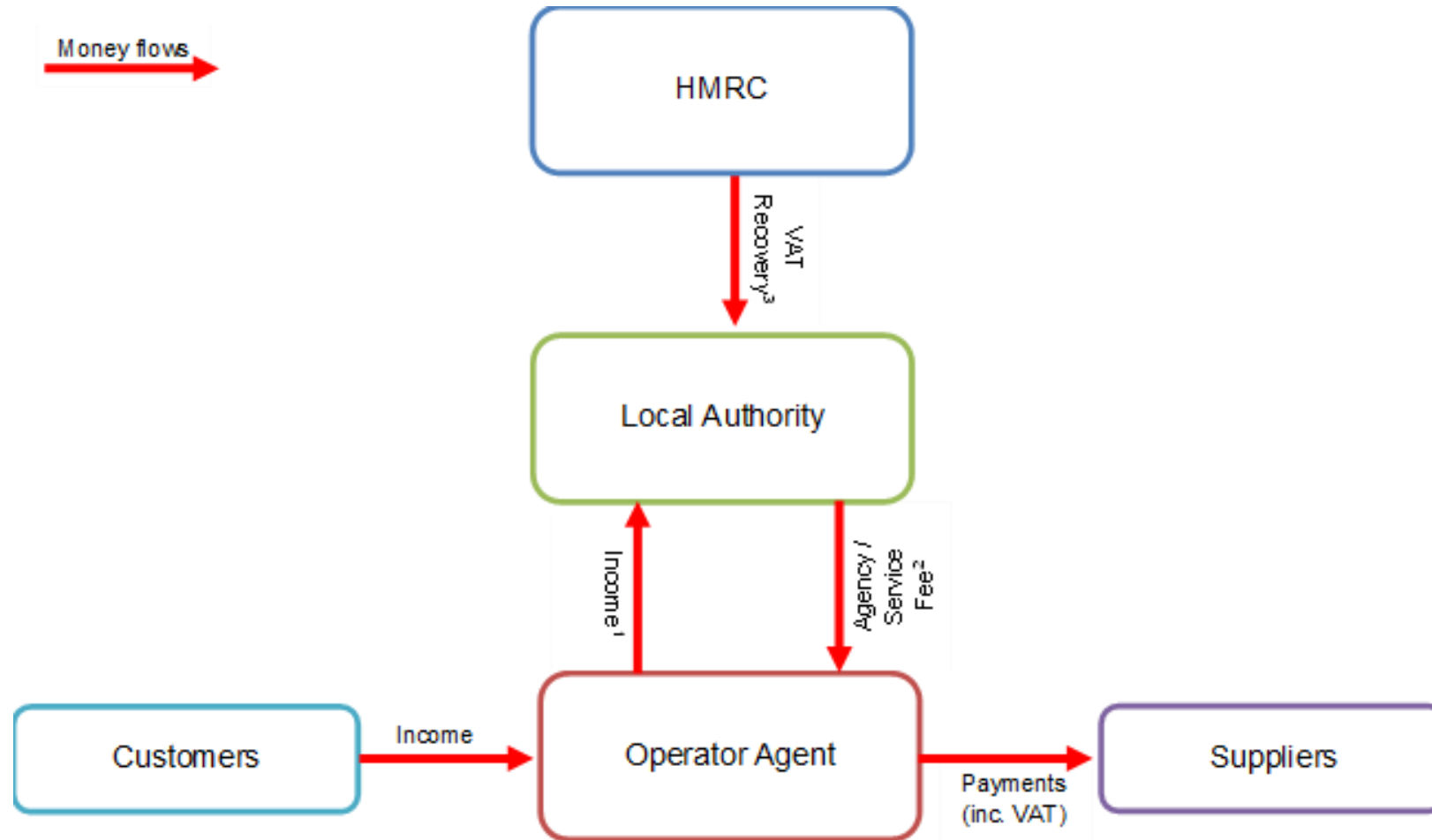


# Legal Issues - Leisure Agency Structure

Louis Sebastian - Partner

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# Legal Issues



## Notes:

1. All Income belongs to the Local Authority but it is held by the Operator Agent day-to-day.
2. Agency / Service Fee – fee for the management and services provided in running facilities:
  - a. Includes Operator's Margin, Head Office Costs etc.
  - b. Standard rated for VAT
  - c. Adjusted to reflect performance deductions and underperformance or surplus share
3. The income could be made up of Standard Rated Income (e.g. catering); exempt income (e.g. non-sport education/training) and non-business income (e.g. leisure and sport). Local authority will need to consider its partial exemption calculation.

## Legal Issues

- Local Authority Vires
- Procurement
  - Variation of existing contract
  - New contract
- Risk allocation - implementation
  - Procurement challenge
  - HMRC challenge

## Legal Issues

- Contract drafting
  - Must clearly describe agency structure
    - Appointment as agent
    - Split of services (contractor agent/principal)
  - Risk allocation by adjusting Agency Fee
  - Payment clauses
  - Reporting rights
  - Pricing
  - "Control" over agency services
  - Revised financial model (LOBTA)

## Legal Issues – common questions

- Lease or Licence?
- How does the Paymech Work?
- Contract amendments in live procurements?
- Do Council's take on additional risk?
  - Contracts with users
  - Employment
  - Liability/Insurance

# Questions and Answers

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