

# Tax Considerations

*November 2021*

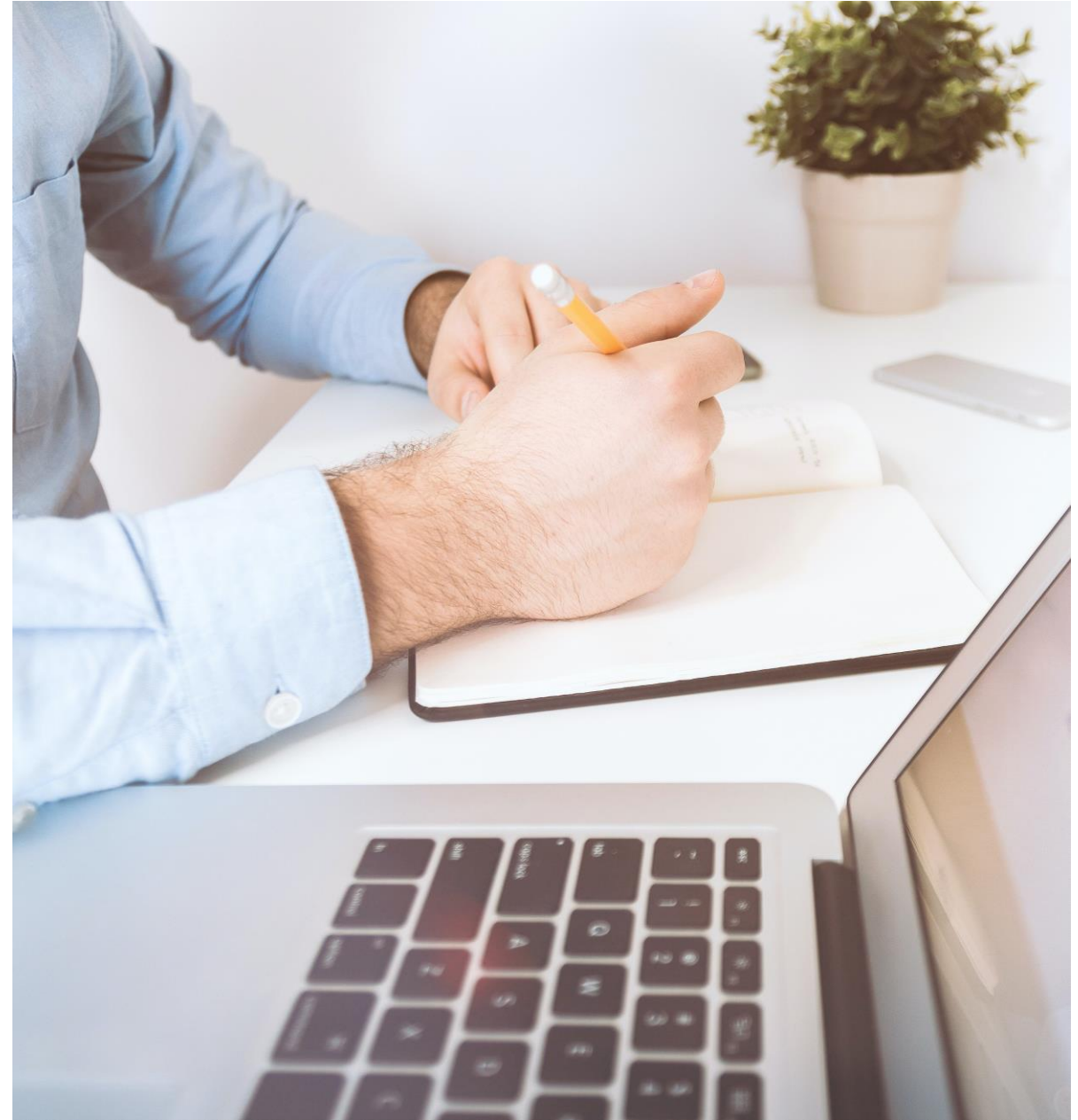
ARUP



**FUTUREGOV**

**copper**

 Grant Thornton



# Terms & Conditions

- This document has been developed by the Towns Fund Delivery Partner, a consortium led by Ove Arup & Partners Ltd with our partners, Grant Thornton UK LLP, Nichols Group Ltd, FutureGov Ltd, Copper Consultancy Ltd and Savills UK Ltd (collectively 'we'). The content of this document is for your general information and use only.
- Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found in this document for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
- Your use of any information or materials contained in this document is entirely at your own risk, for which we shall not be liable.
- This document contains material which is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance and graphics. Reproduction is prohibited other than in accordance with the copyright notice which can be found at [townsfund.org.uk](https://townsfund.org.uk)
- Unauthorised use of this document may give rise to a claim for damages and/or be a criminal offence.
- This document may also include links to other materials, websites or services. These links are provided for your convenience to provide further information. They do not signify that we explicitly endorse these materials, websites or services.
- Your use of this content and any dispute arising out of such use of the content is subject to the laws of England, Northern Ireland, Scotland and Wales.
- For formal Government guidance on Towns Fund please visit [gov.uk](https://gov.uk)

# PURPOSE OF THIS DOCUMENT

This document sets out—at a high level—some key prompts and considerations that Towns may wish to consider in determining how they constitute themselves in projects or take certain actions, with a focus on potential tax implications.

This document is purely informative and does not constitute advice.

The following taxes and issues are discussed:

1. Activities conducted within the local authority
2. Activities conducted by Special Purpose Vehicles (SPVs)
3. Stamp Duty Land Tax (SDLT)
4. VAT in SPVs and local authorities

The document is set out with some key information relating to these four topics and questions that Towns should ask themselves and / or specialists. This is not an exhaustive list of topics or queries Towns need to take into consideration from a tax perspective, and if you have further questions, you should consult your local tax and finance teams.

Please note a number of HMRC weblinks have been provided, which are subject to update by HMRC. Hence when using, please take care to check the date to which the page relates to.

# Activity being conducted within the local authority

The tax issues arising from each Towns Fund Project will differ because

- each local authority will have their own unique tax profile and
- each business plan proposal is unique to the town who proposed it and therefore will give rise to differing tax risks.

In addition, for certain taxes the answer will differ dependent on whether the activity is conducted in the local authority or a special purpose vehicle (SPV).

We would recommend seeking tax advice early on within the project. However, some of the queries we would recommend that you consider when embarking on a project are as follows:

## Prompt for your local team

Is it possible to conduct the project within the local authority?

## Rationale behind the prompt

Local authorities benefit from a corporate tax exemption. In addition, local authorities are defined as section 33 bodies for VAT purposes and operate under a special VAT recovery scheme.

# Activity being conducted within a Special Purpose Vehicle ('SPV') (1 of 2)

If you are considering using an SPV, there will be a number of considerations being made and these can influence the tax position:

- What type of legal entity do you propose the SPV will be?
- Will the SPV transact with the local authority, will the local authority control the SPV, or will it be independent?

Some of the queries we would recommend that you consider when embarking on a project are as follows:

Prompt for your local team	Rationale behind the prompt
Will the entity be a company limited by shares, a company limited by guarantee, a co-operative and community benefit society (CBS), a partnership or a limited liability partnership?	HMRC are informed of the incorporation of a company and send a notification to file a tax return. This doesn't always happen with a CBS and you may need to inform HMRC of its existence. If a partnership is trading, it is likely to be transparent for corporation tax purposes, with tax being due from the members. If the members are local authorities they are likely to be exempt
Will the SPV have charitable status?	There are a number of corporation tax exemptions available to charities. Please refer to the link below for guidance: <a href="https://www.gov.uk/charities-and-tax">https://www.gov.uk/charities-and-tax</a>
If the company is transacting, e.g. providing goods or services, with the local authority, could it be considered an arms length management organisation (ALMO's)?	HMRC have special rules for ALMOs, meaning that often not all income is subject to corporation tax. Please refer to the link below for guidance: <a href="https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim58210">https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim58210</a>

# Activity being conducted within a Special Purpose Vehicle ('SPV') (2 of 2)

Prompt for your local team	Rationale behind the prompt
What activities are being undertaken by the SPV?	<p>If the SPV isn't demonstrating badges of trade, it might be that some activities are considered non-trading and are not subject to corporation tax. To establish if a badge of trade exists, please refer to the following link for guidance:</p> <p><a href="https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim20205">https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim20205</a></p>
What is (any) grant funding being used for?	<p>If it is being used to acquire a capital asset, this is likely to be offset against the cost of the asset and could affect the assets capital allowances position. Please refer to the link below for more guidance:</p> <p><a href="https://www.gov.uk/hmrc-internal-manuals/capital-allowances-manual/ca14100">https://www.gov.uk/hmrc-internal-manuals/capital-allowances-manual/ca14100</a></p>
What activities will be undertaken by the SPV?	<p>The VAT liability of the activities to be undertaken by the SPV will need to be determined, i.e., whether this are subject to VAT or otherwise. Where taxable activities are to be made, the SPV will have an obligation to register for VAT, in instances when the VAT registration threshold is breached. The threshold is £85,000. This will subsequently impact on whether any VAT to be incurred by the SPV is recoverable.</p>

# SDLT – due regardless of whether project is conducted in SPV or Local Authority

If the project involves a land transaction SDLT consideration will be required.

SDLT can be complex, and your legal conveyancers often scope out this advice, we would recommend you seek tax advice early on in the transaction

Some of the queries we would recommend that you consider when embarking on a project are as follows:

Prompt for your local team	Rationale behind the prompt
Does the project involve the acquisition of land?	Stamp Duty Land Taxes ('SDLT') will be due, and filing requirements must be met.
Does the land contain any residential units?	The SDLT rate applied will vary dependent on whether the land is residential or non-residential.
If it does, how many residential units are being acquired?	It may be possible to obtain lower rates via a multiple dwellings relief claim or using non-residential rates.
Will the local authority take possession of the land before payment? Or pay a very large deposit?	Early position of the land / a substantial deposit could mean the SDLT return is due early.
Is the land being acquired from a connected party?	Regardless of the amount paid for the land, because of the connection, HMRC may impose market value deeming provisions.
If the land being acquired from a party you regularly transact with or is it being acquired as part of a wider land transaction?	HMRC have 'linked transactions' rules which could mean several land transactions need to be viewed as one large deal, this could increase the amount of SDLT due.

# VAT – due regardless of whether project is conducted in SPV or Local Authority

Some of the queries we would recommend that you consider, from a VAT perspective, when embarking on a project are as follows:

Prompt for your local team	Rationale behind the prompt
<p>Will the grant funding be freely given, or will the recipient provide anything in return?</p>	<p>Where grant income is freely given, it is considered to be outside the scope of VAT. However, where services are provided by the recipient in return for the grant funding, the VAT treatment of the grant may differ.</p>
<p>Does the project involve the acquisition of land?            If so, has the vendor opted to tax the land?            If yes, is the purchase price inclusive or exclusive of VAT?</p>	<p>Where land is to be acquired, the VAT liability of the acquisition will be dependent on whether the vendor has opted to tax the land. Should an option have been made, the land acquisition will be subject to VAT at the standard rate (currently 20%). The VAT recovery position should therefore be considered. Consideration should also be given to determine whether the price agreed for the land is inclusive or exclusive of VAT.</p>
<p>Will VAT be charged on the construction of the project? If so, can this be recovered? Could any VAT reliefs be available to the construction?</p>	<p>Construction represents a significant cost, so reviewing the VAT position is important. There are a number of VAT reliefs available for certain types of construction, renovation and alterations. The full extent to the plans must be considered, from a VAT perspective, to ensure any available reliefs are maximised.</p>



**Towns<sup>®</sup>**  
**Fund**   
Delivery Partner