

ABERDEEN CITY COUNCIL

COMMITTEE	Finance, Policy & Resources
DATE	4 December 2014
ACTING DIRECTOR	Ewan Sutherland
TITLE OF REPORT	Provision of services relating to Indirect Tax claims
REPORT NUMBER	CG/14/168
CHECKLIST RECEIVED	Yes

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to notify the committee of an exemption from Standing Orders (in terms of Standing Order 1(6)(b)) approved by officers in order to engage PricewaterhouseCoopers LLP (PwC) with a view to securing a refund of overpaid VAT from HMRC on a no-win no-fee basis.
- 1.2 Standing Order 1(6)(b) states that this decision must be reported to Committee as soon as practicable thereafter.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- a) Notes the exemption from the Standing Orders relating to Contracts and Procurement of the contract with PricewaterhouseCoopers LLP for provision of services relating to Indirect Tax claims, all in terms of Standing Order 1(6)(b).

3. FINANCIAL IMPLICATIONS

- 3.1 This is a no-win no-fee arrangement. If the claims are successful, then the Council will receive a cash benefit and fees will be met from this sum. Not to have proceeded with the claim would have denied the Council the opportunity of VAT being reclaimed.

4. OTHER IMPLICATIONS

- 4.1 Entering into a contractual arrangement without a tendering process having been undertaken would amount to direct award of a contract, and so there is a risk of legal challenge by aggrieved competitor(s). The consequences for the Council could include the shortening or

setting aside of the contractual arrangement, awards of damages, financial penalties and reputational damage.

- 4.2 The Council was unable to tender for this work to be done as the approach was made by PwC on the basis of precluding the Council from tendering the specific reviews - which is normal industry practice. That is, the approach with the details was made on the basis that the Council could not use this information to then tender for the work.

5. BACKGROUND / MAIN ISSUES

- 5.1 Aberdeen City Council previously employed PwC in 2008 to act on its behalf to reclaim VAT from HMRC, which the Council had previously overpaid in a number of different areas, following the Fleming case. Whilst PwC was successful in some areas in securing a refund of VAT to the Council, a number of claims have remained unresolved since.

- 5.2 There has been a recent decision by the First Tier VAT Tribunal in the Vodafone case that held that the relevant local authority (in that case) could change the subject matter of its original disputed claims and substitute other claims where an overpayment of VAT may have been made.

- 5.3 There was an opportunity for Aberdeen City Council to potentially secure a refund of overpaid VAT providing it protected its position by lodging an appeal with HMRC by 14 November 2014.

- 5.4 In view of the urgency of complying with this appeal deadline, a request for an exemption from the Council's Standing Orders was made under Standing Order 1(6)(b) and duly approved by the Chief Executive, Head of Finance, Head of Legal & Democratic Services and the Head of Procurement.

6. IMPACT

Any repayment of overpaid tax would assist the Council's financial position in these challenging economic times.

7. MANAGEMENT OF RISK

- 7.1 Under the terms of the contract, PwC have been employed on a no-win no-fee basis, and only if successful would PwC be entitled to a fee based on the value of any recovery that the Council may receive.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

Richard Tong
Finance & VAT Officer
ritong@aberdeencity.gov.uk
01224 522348