



## PORTFOLIO HOLDER DECISION NOTICE

### INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR FINANCE & EFFICIENCY

### TOPIC - OPPORTUNITY TO CLAIM COMPOUND INTEREST ON VAT REFUND OF EXCESS PARKING CHARGES

#### PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel (individual Ward Members are consulted separately where appropriate). In addition, all Members are notified.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

#### Contact Officers:

Case Officer: Alan Goard Tel. 01962 848117 Email agoard@winchester.gov.uk

Committee Administrator: Nancy Graham Te;@ 01962 848 235, Email ngraham@winchester.gov.uk

#### SUMMARY

Following PHD:206 The Council made a claim to HM Revenue & Customs for overpaid VAT on car park excess charges and penalties based on the Fleming/Conde Nast case, plus compound interest based on a test case that was going through the High Court

The Council's claim was partially successful and we have received £161,000 recovered VAT plus £179,000 in statutory (simple) interest.

The argument for compound interest is based on the decision in a Direct tax case, which established that where a taxpayer is deprived of a repayment of tax or has paid tax incorrectly due to an error by HMRC, then the remedy is compound interest. However, HMRC has resisted such claims in relation to VAT and the first case heard in the High Court was lost on the basis that the claimants were out of time (there is a 6 year time limit for making such claims). This case is being appealed.

Our consultants in this matter The VAT Consultancy believes that there is a case to be made as a breach of the 6<sup>th</sup> directive and Fleming/Conde Nast case claims are within the time limit and advise that their lawyer believes there is a strong chance of success. If successful, the Council stands to recover a further circa £196,000 (dependant on what rate of interest is used).

### **DECISION**

That the VAT Consultancy continue to act for the Council in this matter and that the Council instruct lawyers DLA Piper to make submission to the High Court on behalf of The Council, which will stand behind lead cases already proceeding in the Court of Appeal, at a fixed fee cost of £9,130, which would be funded by additional interest receivable in 2009/10.

The fixed fee covers the lodging of the claim and any initial hearing to obtain stand over. It is not anticipated that there will be a full hearing as we are standing behind other actions already in place. There should be no further costs.

### **REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

We could choose not to explore this opportunity.

However advice received so far has resulted in the Council receiving £340,000 that it would not otherwise have received. £9,130 seems a reasonable outlay for a potential return of circa £196,000.

### **FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

n/a

### **DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

N/A

### **DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

Approved by: (signature)

Date of Decision 25.01.10

Councillor F Allgood – Portfolio Holder for Finance & Efficiency