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**From:** Nick Smith  
**Sent:** 22 September 2009 08:58  
**To:** 'Fitchie, Andrew'; christine.martin@uk.pwc.com  
**Cc:** rhona.irving@uk.pwc.com; clare.mccoll@uk.pwc.com; Colin MacKenzie; Graeme Bissett; Stewart McGarrity  
**Subject:** RE: Tie - TEL and agency

All

We have a fairly significant time pressure at our end. Docs need to be appended to the report which goes public today.

Kind regards

Nick

Nick Smith  
Senior Solicitor  
Legal Services Division  
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Edinburgh EH1 1YJ

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*Please note that I am not in the office on a Monday*

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**From:** Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]  
**Sent:** 21 September 2009 19:45  
**To:** christine.martin@uk.pwc.com  
**Cc:** rhona.irving@uk.pwc.com; clare.mccoll@uk.pwc.com; Colin MacKenzie; Graeme Bissett; Nick Smith; Stewart McGarrity  
**Subject:** RE: Tie - TEL and agency

Christine

Thank you for this note which if I understand it confirms that TEL does not require to have agency status expressed in tie OA with CEC.

The key issue on which we need clarity, though, is whether or not mention of TEL as CEC's agent threatens the ability of TEL to seek capital allowances in respect of asset leasing. If it does, our advice on the language in the OA would be different on the basis that this flexibility is very important and we can live without express agency wording (for procurement law purposes), if this is acceptable to CEC.

The draft agreements have not change since they were sent to Paul Laing.

kind regards

**Andrew Fitchie**  
**Partner, Finance & Projects**  
DLA Piper Scotland LLP  
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**From:** christine.martin@uk.pwc.com [mailto:christine.martin@uk.pwc.com]  
**Sent:** 21 September 2009 18:51  
**To:** Fitchie, Andrew  
**Cc:** rhona.irving@uk.pwc.com; clare.mccoll@uk.pwc.com; Colin MacKenzie; Graeme Bissett; Nick Smith; Stewart McGarrity  
**Subject:** Re: Tie - TEL and agency

Andrew

Our understanding of the VAT position for each entity is as below.

The clearance from HMRC see below provides that **CEC** can recover the VAT it suffers either under s33 VATA 1994 for non-business activities or s25 and 26 VATA 1994 for business activities.

*(See attached file: tie VAT clearance.pdf)*

The tie operating agreement with CEC provides that **tie** is acting as an agent to CEC in respect of the infraco contract. HMRC have given clearance that tie can recover the VAT on the onward supplies to CEC, again please see attached. We have written to HMRC indicating that tie's ownership will be transferred to TEL and asking them to confirm our understanding that this does not change tie's VAT recovery position.

I understand that **TEL** has not been incurring costs so its VAT recovery position was not an issue. It was proposed that once it started incurring costs it would register as an intending trader as operator of the trams to recover the VAT.

However as it may now start to incur costs in respect of the management services it provides to tie (and recharges to tie) it could either register itself or apply for a VAT grouping with tie. It does **not** need to have agency status in its operating agreement to enable it to register for VAT .

Clare indicated that the previous preference was not to have a VAT group, however, as the operational and ownership structure has now changed it would be worth revisiting. A group registration should give more flexibility , particularly as Graeme indicated that it is possible that Lothian Buses may be the operator of the trams rather than TEL. A VAT group between TEL and tie would mean that no VAT need be charged on transactions between TEL and tie. However, tie would have a new VAT registration number as part of a group VAT registration.

Would it be possible to see copies of the latest agreements to confirm the wording you are now proposing so we can sign off on that?




Clare is around tomorrow before 10am if you would like to speak.

KR's

Christine

**Christine Martin Senior Tax Manager**

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▼ Rhona Irving/UK/TLS/PwC

**Rhona  
Irving/UK/TLS/PwC**

Action (To)"Fitchie, Andrew"  
<Andrew.Fitchie@dlapiper.com>@INTL

21/09/2009 11:37

Information (cc)"Colin MacKenzie"

Business Related

<Colin.MacKenzie@edinburgh.gov.uk>, "Graeme Bissett" <graeme.bissett@[REDACTED]>, "Nick Smith" <Nick.Smith@edinburgh.gov.uk>, "Stewart McGarrity" <Stewart.McGarrity@tie.ltd.uk>, Christine Martin/UK/TLS/PwC@EMEA-UK, Clare McColl/UK/TLS/PwC@EMEA-UK

SubjectRe: Tie - TEL and agency

Thanks Andrew.

I think we would be able to go with either option. Christine is following this up and we'll get back to you as soon as possible.

regards

Rhona

**Rhona Irving | Partner, Tax | PwC**

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"Fitchie, Andrew" <Andrew.Fitchie@dlapiper.com>

**"Fitchie, Andrew"**

<Andrew.Fitchie@dlapiper.com>

Action (To)Rhona Irving/UK/TLS/PwC@EMEA-UK

21/09/2009 11:18

Information (cc)"Graeme Bissett"

<graeme.bissett@[REDACTED]>, "Stewart McGarrity" <Stewart.McGarrity@tie.ltd.uk>, "Nick Smith" <Nick.Smith@edinburgh.gov.uk>, "Colin MacKenzie" <Colin.MacKenzie@edinburgh.gov.uk>

SubjectTie - TEL and agency

**FOISA Exempt and legally privileged**

Rhona

Graeme's email over the week end summarises the issue.

If the tax advice were that language indicating TEL's limited but express agency status under the Operating Agreement has no impact on HMRC's fiscal approach to TEL's ability to seek capital allowance in connection with asset leasing, that would remove the tension in my view.

Dependent on PWC's considered view then, Graeme's solution in removing any explicit reference to agency in the OA ( provided acceptable to CEC) would be practical and elegant. Leaving the OA as drafted currently would contain support on the procurement and contract management points.

Look forward to hearing from you.

kind regards

**Andrew Fitchie**  
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