

Apologies that we did not pick this up in the fact checking stage but we do have a concern about the modification in relation to EM4 and £ nil rate category.

Our understanding was that Sport England wanted to ensure that community or not for profit sports and leisure facilities should not have to pay CIL. As such, the Examiner has amended the Charging Schedule to provide for a nil rate for CIL in circumstances where it is:

Development by a predominantly publicly funded or 'not for profit organisation'(definition below) including:*

- *medical, health and emergency services;*
- *development used wholly or mainly for the provision of education as a school or college or as an institute of higher education; and*
- *community, sport and leisure facilities.*

We are concerned that this opens up the nil rate beyond what was intended, i.e.: beyond the specific representation that not for profit sports and leisure facilities should not have to pay CIL. Our concern is principally with the word 'predominantly' – if a development was a Joint Venture between a public and private body (for which we have seen a number of examples with a private developer and a registered provider in a Joint Venture) with a 51% public stake they might argue that they are exempt from paying CIL based on the above wording. Also the inclusion of the word 'including' further in the sentence before the bulleted list opens the door for the nil rate to apply to other uses not listed above, such as housing schemes.

There are provisions within CIL Regulation 24 and PPG Paragraph: 041 Reference ID: 25-041-20190901 which would allow for a change to be made at this stage. The PPG states:

How are any errors in the examiner's report corrected?

Examiners should encourage charging authorities to 'fact check' the final report before it is published. The examiner may remedy any 'correctable errors' (under regulation 24) in their recommendations before the charging schedule is approved. However, after such errors are corrected, the charging authority must republish the recommendations in accordance with regulation 24 and give notice of these corrections to anyone who asked to be notified of the examiner's recommendations.

*For the purposes of regulation 24, there are 2 types of 'correctable error'. The first is an error which 'does not alter the substance of the examiner's recommendations or reasons'. For example, this could be a minor typographical or factual error, but not one that would affect levy liability. **The second is an error which 'must be corrected to make the recommendation consistent with the reasons given for those recommendations'.** These more significant errors, which would give rise to a different levy rate or affect levy liability, may be corrected but only if the error in the recommendations is clearly traceable from the examiner's reasons within the same report and the correction is needed to make the recommendations consistent with the reasons.*

We have reviewed the Examiner's reasons in the main report and on this matter they deal entirely with the non-for profit or public sports and leisure facilities and we therefore believe there is a clear locus within which to make this change, in accordance with PPG.

On this basis, we would like to propose a change whereby the word "predominantly" is removed and the word "including" is replaced with "comprising". This would ensure that community or not for profit sports and leisure facilities should not have to pay CIL as was determined by the Examiner but it would also tighten the wording up so that it cannot be used by predominantly public funded organisations to exempt them from paying CIL on uses that are not intended to be nil rated.

For completeness see suggested changes within the full nil rate row below

<p>Development by a publicly funded or 'not for profit organisation'*(definition below) comprising:</p> <ul style="list-style-type: none"> • medical, health and emergency services; • development used wholly or mainly for the provision of education as a school or college or as an institute of higher education; • and community, sport and leisure facilities 	£ Nil	£ Nil
Affordable workspace	£ Nil	£ Nil
Specialist housing in accordance with Local Plan policy H9	£ Nil	£ Nil
Enclosed access roads, ramps and service yards within multi-storey industrial developments. *Definition: Not for profit organisation is one that does not earn profits for its owners but conducts business for the benefit of the general public; all money earned by or donated to the organisation is used in pursuing the organisation's objectives	£ Nil	£ Nil