



Cost efficiency efforts hindered by complicated staffing rules

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As we are all aware staff are the biggest cost to the NHS and cost efficiency is currently utmost in all our minds. The VAT issues relating to the supply of staff and the scope for recovery of VAT charged are complicated, and do nothing to increase the cost efficiency efforts of NHS bodies. The rules have changed recently and there may be more changes in the pipeline, so this update sets out the current position.

Staff hire concession

The staff hire concession, which used to allow temporary staff agencies to charge VAT on their commission only, was withdrawn by HMRC from 1 April 2009. As a result, agencies that used to use this concession now have to add VAT to the full charge for the staff they provide.

In addition, it also appears that a number of locum agencies supplying doctors and other health professionals have started to charge VAT on their services. Although there have not been any changes to the rules in this area, it may be that some agencies have realised that they should have been registered for VAT anyway and have therefore done so now.

As a result of both the above issues, NHS bodies will find that they are likely to be incurring more VAT on agency staff than they have done in the past.

What is the scope for recovery of this VAT?

The recovery of VAT on agency staff has been a difficult and contentious issue for some time. The current rules are that VAT can be recovered as follows:

- By using Refund Direction (contracted-out services) code 41 for nursing staff. HMRC has been reviewing what is covered by this code for some time, but until the review is completed NHS bodies can recover VAT on all types and grades of nurse, including nursing auxiliaries and nursing/healthcare assistants.
- By using Refund Direction code 69 for administrative and clerical staff. This code does not cover the supply of managerial level staff, accountants, surveyors, HR staff and IT specialists. This list of exclusions is not exhaustive.

It is also important to remember that code 52 (professional services) cannot be used to recover VAT on agency staff. This code only applies when a service is being provided by a professional services firm – agencies only supply staff and not professional services.

Potential Changes to the Refund Direction rules

The Treasury has prepared some revisions to various codes on the Refund Direction list. The main ones relating to agency staff and professional services are as follows:

- Recovery under code 69 would be restricted to the purchase of a complete service from a third party, e.g. contracting out

of a typing or secretarial service. The scope for recovery of VAT on agency staff would be removed.

- Recovery under code 52 would be restricted to advice or opinion on efficiency or policy issues, legal advice and internal audit.

Although these changes have been publicised, the revised list has not been published in the London Gazette and HMRC will not enforce the new definitions until this is done. HMRC has advised NHS bodies to continue recovering VAT under the current definitions. It is not currently known if or when the new definitions will be implemented, but if they are, VAT costs will increase significantly for the NHS.

Accenture/Barclays case

The recent ruling in the Accenture/Barclays VAT case has highlighted the complexities involving types of supply. Accenture UK Limited had a contract with Barclays Bank to provide an outsourced IT service. As part of this service its subsidiary company, Accenture Services, seconded a number of its staff to the Bank. These staff were paid their normal salaries directly by the Bank. Accenture Services then attempted to make a case that it was acting as an employment business and was entitled to use the staff hire concession and thereby avoid adding VAT on its charges.

HMRC refused to allow the company to use the concession on two alternative arguments:

- The supply was one of services rather than staff.
- The supplier was not acting as an employment business (i.e. an agency).

The company sought a judicial review of HMRC's refusal to allow the concession and the court ruled that the supply did not fall within the terms of the concession and that HMRC were entitled to require VAT to be charged.

Although this issue is now somewhat academic because the staff hire concession has been withdrawn, it does highlight the importance of distinguishing between a supply of services and a supply of staff. This is important in two respects:

- It can determine the liability of a supply, because where there is a supply of services these can be either standard rated or exempt from VAT.
- It can determine whether the customer is entitled to recover the VAT.

How can the overall cost of agency staff be reduced?

The combination of the above changes, actual and potential, mean that NHS bodies will be looking carefully at staff costs to see if there is scope to reduce both the VAT and the overall cost. There are a number of possible options:

- Is it correct that the NHS organisation is charged VAT?
- Is there another way the staff or services could be obtained?
- Could temporary workers be self-employed?
- Can the net cost of the service be reduced?

How can VAT Liaison help?

VAT Liaison is experienced in advising on VAT issues. In addition, our parent company, Liaison Financial Services, can review your overall expenditure on agency staff and propose solutions to reduce your costs.

If you would like to discuss how we can help you with this issue then please contact your usual VAT Liaison adviser or our Tax Helpline on 0800 700 652.