



## NHS Newsletter August 2009

This newsletter provides an update on various VAT and tax issues relevant to the NHS. In some cases we have included links to previous updates where they provide more detail on a particular subject.

### **VAT rate – reversion to 17.5%**

As you will be aware, the VAT rate will revert to 17.5% on 1 January 2010. HM Revenue & Customs (HMRC) has introduced anti-forestalling legislation to prevent purchasers taking what they perceive to be unfair advantage of the rate change.

Our recent mailshot (see link below) provides further details of how these rules will operate.

There are still opportunities to save VAT by purchasing goods and services before the rate changes, but you need to check the rules carefully to avoid being caught out.

Link to website news item Aug 2009

<http://www.vatliaison.com/documents/ReversionofVATrateto17.pdf>

### **3 year cap claims (Fleming)**

HMRC has received a large number of claims from NHS bodies under the 3 year cap rules, the deadline for which was 31 March 2009. In many cases NHS bodies are seeking significant amounts of VAT covering the period back to 1973.

No claims have yet been approved and HMRC is currently undertaking a programme of visits to a small number of NHS bodies to find out more about the claims.

### **Property transactions – scope for VAT errors and VAT savings**

NHS bodies are involved in a wide variety of transactions relating to land and property. These include PFI and LIFT schemes, developments in association with third parties such as medical service providers, local authorities and universities and sales of surplus land and property.

It is important to remember that where an NHS body sells land or property or grants a lease or licence (or even informal lettings) then it cannot use the contracted-out services rules to reclaim VAT on associated costs. Instead it must use the business activity rules and this will often mean that property transactions are exempt from VAT and so no VAT can be reclaimed on associated costs.

It is sometimes possible to mitigate the VAT costs associated with property transactions but it is essential that advice is taken at the appropriate time, i.e. before any formal commitments are made. This will allow all options to be considered and the true cost of a development can be established.

## **Social enterprises – provider services**

Many NHS bodies are becoming involved with social enterprise businesses – either as a way of transferring their provider services outside of the NHS or in relation to contracting with them for a wide range of services.

It is important to be aware that a social enterprise business will have to follow the normal VAT rules and will not be able to use the special VAT rules which allow NHS bodies to reclaim VAT on contracted-out services. This may well mean that a social enterprise business will have higher costs (compared with an NHS body) because it will be unable to reclaim all or most of the VAT it incurs on costs.

## **Foundation Trusts – the Construction Industry Scheme**

Foundation Trusts have received conflicting advice from HMRC in respect of their obligation to make CIS returns. However, following further discussions, we can now confirm that Foundation Trusts are not required to make CIS returns.

## **Foundation Trusts – Corporation Tax**

HMRC is planning to introduce Corporation Tax for Foundation Trusts from 1 April 2010. This would mean the first tax would become payable in January 2012. A consultation on various issues, such as what types of profits should fall to be taxed, is due to be issued imminently.

## **Psychologists' services**

From 1 July 2009 psychologists have become regulated by the Health Professions Council. This means that most services provided by psychologists will be exempt from VAT from that date.

This link provides details of the services which are now exempt from VAT.

Link to website news item Aug 2009

<http://www.vatliaison.com/documents/Psychologists.pdf>

## **Contract and invoice splitting**

There are still some misconceptions about how to deal with invoices for goods and services where the charges are split between the different elements of the service. HMRC has advised that the general rule is that where there is a contract for a single supply of services then the VAT on that contract will either be wholly recoverable or not recoverable. It does not allow NHS bodies to reclaim VAT on some of the elements on an invoice, even if there is a separate value allocated to them.

Where there is a contract for a package of services (e.g. provision of equipment, maintenance, consumables and training) then we would usually recommend the contract is reviewed and if appropriate a ruling is sought from HMRC. If approval is obtained this will normally protect VAT recovery for the term of the contract.

## **Error corrections - 3 year cap extended to 4 years**

Following the alignment of various time limits for correcting tax errors, the 3 year period during which VAT errors relating to business activities can be corrected is being extended to 4 years during the 2009-2010 year. No claims or corrections can be made for VAT periods prior to April 2006.

This can be beneficial where VAT claims have been missed on business activities, but of course there is a downside in that where VAT has not been paid to HMRC where it should have been, that also has to be corrected for 4 rather than 3 years.

Don't forget that these rules only apply to VAT which relates to business activities. VAT incurred on contracted-out services can only be reclaimed during the current year, or by 30 June following the year end.

## **Overseas transactions**

It is becoming more common for NHS bodies to purchase goods or services from overseas suppliers. It is important to be aware that just because the overseas supplier does not make a VAT charge on their invoice, the assumption can be that they are cheaper than a UK supplier.

This is not the case, and in most cases NHS bodies will have to pay VAT on these purchases, either via their VAT return (for purchases from EU suppliers) or by paying VAT to HMRC at the time of import (for purchases from non-EU suppliers).

The rules can be complicated and NHS bodies can be caught out, so if you are planning such a purchase we recommend you check the VAT implications.

## **Partial exemption reviews**

HMRC require all NHS bodies to undertake a partial exemption review each year to determine whether they are required to repay a proportion of the VAT they have previously recovered on contracted-out services. This will apply when the NHS body receives exempt business income such as private patient income and property rental income (e.g. to GPs).

If the review is not submitted to HMRC then they will often estimate the amount due which can often be significantly more than the true figure.

In addition, if a review is undertaken VAT recovery in respect of taxable business activities can often be identified which can mean the NHS body is actually due a refund from HMRC rather than owing money.

We would recommend that all NHS bodies ensure that they are up to date with their partial exemption reviews.

## **VAT recovery on agency staff and professional services**

As you may be aware, the Treasury has drafted revised definitions for contracted-out services codes 52 (professional services) and 69 (administrative services and agency staff). These new definitions are not yet being enforced because the Treasury is still in discussions with affected parties (such as the Department of Health) about the implications for departmental budgets, as the new definitions would significantly reduce the scope for VAT recovery.

There is still no news of if and when the new rules will be implemented but the view seems to be that it is only a question of time. We would therefore recommend that you consider the cost implications of the proposed changes. We will issue a further update as soon as a decision is made.

This link provides further details of the proposed changes.

Link to website news item May 09

<http://www.vatliaison.com/documents/Costefficiencyeffortshinderedbycomplicatedstaffingrules.pdf>

## **NHS seminars**

We are running a series of free seminars providing an update on VAT and other tax issues relevant to the NHS. The location and dates can be found on the link below. If you would like to attend one of these please contact us as soon as possible.

Link to website seminar page

[http://www.vatliaison.com/seminars\\_home.htm](http://www.vatliaison.com/seminars_home.htm)

## How can we help?

If you have any concerns about the issues covered in this newsletter then please contact your usual VAT Liaison adviser or our free helpline on 0800 700 652. If you are not currently a VAT Liaison client, our VATflow methodology aims to ensure that any over or underpayments of VAT are identified before your VAT return is rendered, thus avoiding the extra administration involved in preparing claims and delays in receiving refunds. If you would like to receive more information about our unique VATflow service, please contact our VAT Helpline on 0800 700 652.

*Every effort has been made to ensure the accuracy of this information. However, it may not be comprehensive for your particular situation and recipients should not act upon it without first seeking professional advice.*



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