

MONTHLY NHS VAT NEWS BULLETIN

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1. Capital VAT Recovery

Under current published guidelines, VAT recovery percentages calculated on capital schemes below £500K in value (excluding VAT) do not need Customs' prior approval, however sufficient evidence and working papers must be kept available to justify VAT recovery should Customs require this.

Also at present, the 'banding options' can be used for schemes up to £15m in value before prior approval is required, (although the bandings are generally thought to be less advantageous in most cases). Any VAT recovery on capital schemes sought outside of these guidelines requires prior agreement.

Customs will soon be publishing revised guidance, believed to come into effect from April 2005, whereby Trusts will be required to seek prior approval to recover VAT on **any** capital scheme where the potential VAT recovery is likely to exceed £50,000. This is irrespective of whether the banding option is used, or whether the VAT recovery is based upon a detailed review of costs. Furthermore, Customs will be generally 'tightening up' VAT recovery on schemes. For example, where VAT recovery is sought based upon a review of costs, more detail will be required on larger items such as mechanical costs.

These rules apply equally where Trusts determine VAT recovery themselves or where they appoint the services of VAT advisers.

The general rules on VAT recovery also apply stringently to schemes reviewed under the 'free' Procure21 service, where no 'special arrangements' or advantageous terms have been agreed with Customs.

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2. VAT Avoidance

With effect from 1 August 2004, legislation has been introduced to require VAT registered traders to notify Customs if they use schemes that Customs deem to be 'VAT Avoidance'.

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The legislation is intended to dissuade the creation and use of '**contrived**' and elaborate schemes, whose main purpose is to avoid tax. The requirement to notify Customs will provide them with information in order to take counter action where appropriate.

There are two types of areas that Customs are targeting, these are 'Designated avoidance schemes' and 'Hallmark schemes'. Customs have published a list of 8 designated schemes the use of which must be disclosed to Customs. A hallmark scheme is basically a transaction or number of transactions entered into which has, as one of its main purposes the intention to achieve a tax advantage.

Customs have also published the hallmarks of such schemes.

There are heavy penalties for traders who fail to notify Customs when they use such schemes, however as with other VAT penalties, these **cannot** currently be directly levied on NHS bodies. Trusts should however still be aware that certain transactions with non-NHS third parties may still come under scrutiny. It should also be pointed out that NHS bodies have in the past been specifically warned against using avoidance schemes by the DoH and HM Treasury.

Finally, the legislation is **NOT** intended to dissuade traders or NHS bodies from reviewing bona-fide transactions in order to ensure that you gain the correct tax advantage, (e.g. PFI arrangements, property transactions, business reviews, COS reviews, etc).

If you would like more detailed information on the legislation or are in any doubt about arrangements entered into or being suggested for your NHS organisation, please let us know at the earliest opportunity.

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3. Partial Exemption - Statutory Obligation

Customs currently allow NHS bodies to complete a partial exemption calculation annually in conjunction with a business activity claim. This is a concession, as the normal legal requirement is that the calculation is completed for each monthly VAT period, with an annual adjustment made at the end of the year.

It has been Customs' policy in recent years **not** to accept annual business claims without a partial exemption calculation also being completed.

Even if Trusts choose not to submit a business activities claim, there is **still** a statutory requirement to carry out the partial exemption calculations to ensure that trusts meet their legal requirements regarding Partial exemption.

We wish to remind our clients and other NHS Trusts that when we calculate annual business claims, we also complete a **FREE** separate partial exemption calculation as

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part of this exercise to ensure that you meet your statutory obligations and to ensure that your partial exemption VAT liability is minimized.

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4. NHS Land and Property Sales

Transactions involving land and property are often complex and the VAT liabilities can vary. Generally, the supply of land and property is exempt from VAT however certain supplies may be standard-rated, zero-rated or even outside the scope of VAT depending upon the circumstances.

When disposing of land and property such as surplus hospital land or staff accommodation, the NHS must apply the correct VAT liabilities in the same way as everyone else. Professional advice should therefore always be sought at the earliest opportunity in order to ensure transactions are treated correctly for VAT purposes and you don't incur unnecessary costs.

In future, if you and your colleagues would prefer to receive this bulletin electronically, please send us an e-mail simply stating 'SUBSCRIBE' in the subject box to:

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