
NHS VAT REPORT - CRS VAT CONSULTING - APRIL 2010

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1. Nursing agency VAT concession

NHS bodies should be aware of a newly published concession which may lead to a decrease in VAT being charged on nursing services which is currently eligible for recovery under the Contracted-Out Services ("COS") rules.

HMRC have now permitted nursing agencies (or employment businesses providing nurses, midwives, and other health professionals) to exempt the supply of nursing staff and nursing auxiliaries supplied to an NHS body (provided that they are registered with an organisation approved by HMRC).

Qualifying suppliers providing nursing auxiliaries or care assistants may use the concession if the individuals they place undertake some direct form of medical care (such as administering drugs or taking blood pressures, for the final patient). However, the concession does not apply to supplies of general care assistants who are only involved in providing personal care such as catering, washing or dressing the patients.

In some cases, it may be in the interests of nursing agencies to continue to charge VAT, rather than to exempt their supplies.

For example, certain nursing agencies may be taxable businesses which are able to recover 100% of the VAT which they incur in respect of nursing and auxiliary staff which they supply (because they are supplied subject to VAT). Therefore, they may feel that their own VAT recovery will be restricted by adopting the concession to certain services. This is likely to lead to an increase in the costs to their NHS clients

because of the irrecoverable VAT costs. As a result, there may be scope for certain NHS bodies to ask such agencies to continue to charge VAT on certain services described above. If the agencies agree, then NHS bodies may continue to recover the VAT on the costs of supplies of nursing and auxiliary services which they incur, (until at least the COS rules change).

If you would like further details regarding this concession, and the impact it may have on your NHS body's recoverable VAT, please do not hesitate to contact us.

2. VAT recovery on supplies of nursing staff - ODPs

As stated in the article above, it is common knowledge that NHS bodies are able to recover VAT incurred on supplies of nursing staff (including qualified and non-qualified nurses/healthcare assistants) under COS heading 41 and admin/clerical grade staff (including receptionists, secretaries, etc) under COS heading 69.

However, in respect of temporary placements of health professionals described as 'ODP's' and 'ODA's', HMRC have recently sought clarification from their policy unit and have taken the view that the related VAT incurred by an NHS body is not recoverable.

We are currently seeking further clarification on this point, given that we understand these acronyms are in fact considered by many as nursing staff grades.

3. Latest 'Fleming' VAT update

Following on from the submission of Fleming/Conde Nast VAT claims (the first anniversary of the 31 March 2009 deadline having now come and gone), the claims submitted on behalf of NHS bodies still appear to have a long way to go before they are settled.

At present, HMRC have stated that both the 'Lennartz' and 'Wellington/BUPA' elements of the Fleming claims are invalid. This is because in HMRC's view, subsequent case law has meant that the decisions in these cases were either wrong or have been superseded.

HMRC invited CRS VAT Consulting along with other representative claimants to a meeting in London a few weeks ago to explain their decision on the Wellington/BUPA drugs issue with a view to finding some 'common ground,' however the obvious intention was to dissuade any claimant from taking the issue any further. It is however likely that at least one rejected claimant may submit a formal appeal to the VAT Tribunal.

Other elements of certain claims are still technically valid (e.g. prescription drugs, other drug sales, catering, etc), however HMRC have still not yet decided on the issue of whether the claimant Trusts or the SHAs have the right to pre-Trust claims. Until this issue is resolved, these elements of claims which are technically valid are also being held up.

4. Online VAT return filing

In our last VAT report, we advised that the new procedures for compulsory online VAT return filing were not yet available to the NHS. HMRC have since stated that online filing will be applicable to the NHS, however the issue of how to file the accompanying VAT21 Form does not yet appear to have been resolved. We will therefore keep you informed as soon as further guidance is available.

5. VAT status of supplies of education by university subsidiary companies

Revenue and Customs Brief 09/10 announced their revised policy with regard to the supply of education by a university subsidiary trading company. HMRC have reviewed their policy on the treatment of supplies of education delivered by companies that are owned or controlled by a university, and have concluded that, in many cases where a university trading company provides education, they are acting as a 'college, institution, school or hall of a university' and in consequence are 'eligible bodies'. This means that any education or training provided by the university subsidiary trading company is an exempt supply of education.

University trading companies which have been charging VAT on education and training services to NHS bodies in the past have benefitted from input tax recovery on associated costs. In turn, the VAT charged by these companies to NHS bodies has generally been eligible for recovery by the NHS recipient under the COS provisions.

This change in HMRC's policy is therefore likely to lead to university trading companies having to increase their charges to NHS customers to take account of the VAT exempt status and therefore irrecoverable VAT on costs.

Getting added to our list

If you have other colleagues who would benefit from receiving this VAT report electronically, please email us their details and we will gladly include them on our mailing list.

About us

CRS VAT Consulting is a firm of chartered tax advisers specialising in pro-active and innovative VAT solutions. Since 2002 we have grown to become a leading provider of VAT services to the NHS in a crowded marketplace. We have achieved this by consistently identifying increased levels of VAT recovery and providing flexible services tailored to the specific needs of our clients. Our credentials can be checked with the Chartered Institute of Taxation, which is the senior professional body in the United Kingdom concerned solely with all aspects of taxation.

For further advice about items in this VAT report, or to find out about our comprehensive range of NHS VAT services, please contact us.

This newsletter is designed to keep readers up to date with current VAT developments but is not intended to be a comprehensive statement of law. No liability is accepted for the opinions it contains or for any errors or omissions. If you no longer wish to receive this newsletter, please email us.

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