

Contents:

- 1. Changes to VAT Place of Supply Rules - 1 January 2010**
 - 2. Fleming VAT Claims Update**
 - 3. VAT rate reversion to 17.5% on 1 January 2010 – Impact for NHS bodies**
-

1. Changes to VAT Place Of Supply Rules – 1 January 2010

Changes are about to be made in respect of VAT Place of Supply rules from 1 January 2010 due to a Europe wide initiative called “The VAT Package”. It aims to simplify the current rules relating to cross – border supplies of services and the recovery of VAT on purchases made in other EU countries.

Most notably, the 'general rule' for *business to business* (including NHS) supplies of services shall change. Services will be taxed at the place where the organisation receiving such supplies is established and no longer where the supplier is established, which is the current general rule.

Effect on services received by NHS bodies

The place of supply for VAT purposes of many services which NHS bodies currently receive is in most cases already determined by the location of the NHS bodies themselves (being located in the UK, you account for UK VAT to HMRC). Furthermore, most suppliers to NHS bodies tend to be based within the UK. It is unlikely therefore that the proposed changes will alter the way in which NHS bodies receiving most services account for VAT on them. However, it may lead to an increase in services received on which VAT must be charged.

The Reverse Charge procedure

NHS bodies currently receiving services such as consultancy, IT development, accountancy, etc, from overseas suppliers must currently account for the related VAT using the Reverse Charge procedure. Under the Reverse Charge, VAT is calculated

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.

T: 01322 554053 F: 01322 559981: E: info@crsvat.com: W: www.crsvat.com

CRS VAT Consulting Ltd. Registered in England No 4705171

currently as 15% of the value of the services received. The VAT figure is added to box 1 of the VAT return, (and the value to box 6). The procedure avoids the necessity for overseas businesses to register in another EU country when the recipient business (the NHS body) can account for VAT on the supply.

Going forward

Following the changes, VAT on services currently received by NHS bodies, where the place of supply is determined by the location of the supplier (e.g., clerical or secretarial services, management services, etc), must also be accounted for using the Reverse Charges procedure. For example, a US based supplier of management services, not registered for VAT in the UK prior to the changes, making such supplies to an NHS body, does so outside the scope of UK VAT. Therefore, neither the US supplier, nor the NHS body would be expected to charge UK VAT to HMRC. If, following the changes, the US supplier were to make the same supply of management services to the NHS body, the NHS body's status as the recipient would mean that it would need to account for VAT on the transaction under the Reverse Charge procedure.

Reverse Charge VAT recoverable under COS rules

Where the VAT on specific services received by NHS bodies is typically recoverable by virtue of Contracted - Out Services VAT law, (e.g, consultancy, clerical services, translation services, etc), VAT which must be accounted for on their receipt under the Reverse Charges procedure can be recovered as Contracted – Out Services VAT, meaning no net loss to the NHS body receiving the services. However, the VAT incurred on the purchase of certain services, such as the temporary placement of doctors through agencies, will remain non-recoverable.

Changes to scope of application of Reverse Charge Procedure

The procedure itself shall not change as a result of The VAT Package proposals. However, as a consequence, it appears that the scope of its application will widen slightly. The reverse charge currently applies when the recipient of a service receives it for a business purpose, and accounts for VAT on the supply it receives. However, from 1 January 2010, an organisation that is involved in both business and non-business activities will have to account for VAT on a supply via the reverse charge, even if the service is received in connection with its non-business activity. Therefore this will have a bearing on NHS bodies where they receive most services for non- business purposes

Please feel free to contact us in respect of any of the details above.

2. Fleming VAT Claims Update

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.

T: 01322 554053 F: 01322 559981: E: info@crsvat.com: W: www.crsvat.com

CRS VAT Consulting Ltd. Registered in England No 4705171

CRS VAT Consulting has been working through a number of policy and technical issues with HMRC following submission of the Fleming VAT claims, with a view to getting these approved. Although HMRC are yet to pay out any of these claims to the NHS, they aim to settle all claims by the end of 2011. Furthermore, HMRC are hoping to settle a good proportion of the NHS claims by the end of the 2009/10 financial year, provided the issues have been resolved.

Points being considered include:

- Entitlement to claims – some Trusts and SHAs have sent in duplicates for the same periods as it has been suggested (incorrectly in our view) that the SHAs are entitled to make claims and not Trusts. This is being considered by HMRC's legal advisers.
- Dates from which retrospective 'extrapolation' has been started and method of extrapolation.
- The 'quantum' of claims including areas covered, realistic extrapolation methods, output tax liabilities, etc.
- Interest – HMRC are generally committed to paying 'simple' interest, however there is a strong case to argue that this should be paid 'compound'. We are aware that some private sector Fleming claimants have already been paid compound interest.
- Lennartz – the whole policy of Lennartz and its retrospective treatment is being considered by HMRC policy and legal teams.

HMRC received a total of £260m Fleming VAT claims from the NHS; 25% of this value (£66m) was submitted by CRS VAT Consulting. HMRC have acknowledged that CRS VAT Consulting has taken a leading role in ensuring that the standard of claims submitted is technically robust. Specifically, we have been told that CRS VAT Consulting has 'put in a lot more work than many' in making sure the claims submitted stand up to scrutiny. We are therefore confident that a good proportion of our client's claims will be paid in the earlier timeframe.

3. VAT rate reversion to 17.5% on 1 January 2010 – Impact for NHS bodies

You will probably be aware that the VAT rate is due to revert to 17.5% with effect from 1 January 2010. Some opportunities may be available to benefit from the existing 15% rate, but "anti-forestalling" legislation introduced by HMRC in the 2009 Budget must be fully considered first. The aim of HMRC's rules is to prevent purchasers of goods and services from taking an unfair advantage of the rate change. If you believe any of the transactions your NHS body undertakes or shall undertake need consideration in respect of the VAT rate reversion, please feel free to 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.

T: 01322 554053 F: 01322 559981 E: info@crsvat.com W: www.crsvat.com

CRS VAT Consulting Ltd. Registered in England No 4705171

Following are examples of how the rules shall apply:

- If goods are ordered, invoiced, delivered and paid for by an NHS body by 31 December 2009, it will not have to pay an additional VAT charge. Therefore an opportunity would exist for the NHS body to gain a VAT saving before the rate reverts to 17.5%.
- If an NHS body buys an equipment leasing contract or other services and an invoice is issued to it before 1 January 2010, then VAT should be charged at 15%. Provided that this is standard practice under the terms of the contract and payment is due within 6 months, there will be no additional 2.5% VAT charge.
- If an NHS body is engaged in an on-going construction contract (where VAT may not be eligible for recovery), it will be advantageous to ask contractors to issue invoices for work carried out up to December 2009 by 31 December 2009 so that it can be charged at the 15% rate. An advanced payment for future works could also be made (up to £100,000). (N.B., A pre-payment in excess of £100,000 which is made before the rate change (i.e. before 1 January 2010) for goods or services to be provided after the rate change, will attract an additional VAT charge of 2.5% unless it is in line with normal commercial practice).

You can ask a supplier who raises an invoice after 31 December 2009 to split the invoice between the two rates on the value of the work undertaken before and after the rate change.

NHS bodies issuing invoices

We would advise that in the build up to the VAT rate change date (31 December 2009) NHS bodies aim to keep their invoice issuing as up to date as possible. This will lead to them receiving payments sooner, and avoid difficulties which may arise if invoice issuing is delayed after goods or services are supplied.

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.

T: 01322 554053 F: 01322 559981: E: info@crsvat.com: W: www.crsvat.com

CRS VAT Consulting Ltd. Registered in England No 4705171