

NHS VAT Report - October 2009 - CRS VAT Consulting

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1. Option to tax update - revocation

Property owners and landlords (including NHS bodies) are now able to revoke an Option To Tax in order that sales and lettings of a property can revert to being exempt from VAT. This may lead to opportunities for certain NHS bodies which opted property at the inception of the Option To Tax regime.

The Option To Tax was introduced on 1 August 1989. It allows businesses (as well as NHS bodies making business supplies) to elect to charge VAT on supplies of a commercial property, thus allowing VAT recovery on related costs such as construction or refurbishment. Without the option, supplies made involving a commercial property would be exempt from VAT and the recovery of VAT on related costs would only be possible if it fell below the de-minimis level of VAT.

An option can be revoked where more than 20 years have elapsed since it was first given effect. Therefore, for an owner who had opted to tax a property on or around 1 August 1989, the first opportunity to remove it has arrived. The revocation of an option may benefit an NHS body which owns property it wishes to sell or let.

For example, if an NHS body decides to sell one of its properties where the option has been revoked, it will not have to charge VAT. This will benefit a potential buyer who is unable to recover the VAT. (e.g., a GP clinic, a private hospital, charity or an education provider).

Alternatively, a tenant who cannot recover VAT may view the rental of a property, where the option has been revoked, as a more attractive choice than renting another building which may have an option in place.

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.

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Land and Property is a very complicated area of VAT. Therefore before making the decision to revoke an Option To Tax, an NHS body must fully understand the ramifications. Please feel free to contact us if you need more specific advice.

2. VAT recovery on supplies of staff and consultancy services

We are frequently asked to provide definitive advice on the recoverability of VAT on staff agency fees and consultancy services. We have therefore reproduced the current rules below, together with some additional guidance regarding the differences between staff and consultancy services.

Nursing and admin staff - headings 41 and 69

At present, NHS bodies are able to recover VAT on supplies of nursing staff (including qualified and non-qualified nurses/healthcare assistants) under contracted-out services (“COS”) heading 41 and admin/clerical grade staff (including receptionists, secretaries, data inputters, accounts clerks, etc) under COS heading 69.

VAT cannot be recovered under any COS heading on any other staff provided by an agency, such as medical staff (doctors/locums/consultants, social workers, physiotherapists, laboratory or theatre technicians, radiographers, etc.) and other support staff, (cooks, cleaners, laundry workers, drivers, porters, etc).

The supply of services such as catering, laboratory, laundry, library services, collection & delivery, passenger transport, pest control, security, etc. continue to be eligible under the various headings as contracted-out services in their own right, but supplies of agency staff carrying out these functions are not eligible for recovery.

Consultancy services – heading 52

Consultancy and advisory services are eligible for VAT recovery by NHS bodies under COS heading 52. This currently includes the professional fees of architects and structural engineers, quantity surveyors, etc associated with building schemes. Also included are the services of solicitors, computer consultancy work, including software development and other departmental advisory work, legal advice and internal audit.

However, supplies of ‘consultants’ by an employment agency (typically but not always) to fill a post, (e.g. interim financial controller, director of IT, etc), where the consultant comes under the ‘management and direction’ of the NHS body are not eligible for recovery as these are deemed to be supplies of senior staff.

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These rules can sometimes lead to confusion because many staffing agencies and consultancy firms alike use interchangeable terms like ‘interim’ or ‘consultant’ in their contracts and invoicing procedures.

Areas at risk include:

- Where a consultant assignment is for the duration of a ‘project’ and works for an in-house project team. This can sometimes seem like consultancy due to the nature of the project (e.g. IT development), however may really be staff augmentation and therefore not eligible.
- Where a consulting firm’s contract is based on ‘time spent’ with vague or no deliverables and their invoice is accompanied by a timesheet (instead of for instance a fixed contract with specific deliverables and acceptance criteria). These can sometimes be confused as supplies of staff, where in reality the consulting firm has been appointed to provide advice which is eligible for VAT recovery. The presence of a timesheet is not therefore a deciding factor.
- Where a consulting firm’s range of services include both advice and staff augmentation but their invoicing does not clearly differentiate between the two. Again, each individual supply must be considered separately to determine the eligibility.

Although not exhaustive, we recommend the following checklist is used as a rule of thumb to determine eligibility for VAT recovery on consultancy services:

<p>If a consultant:</p> <ul style="list-style-type: none"> a) works through a staffing agency or other service provider b) is on an assignment at the NHS body to fill a particular post or “augment” staffing levels c) comes under the day-to-day direction and management of the NHS body <p>this is typically a supply of staff and therefore not eligible for VAT recovery.</p>	<p>If a consultant:</p> <ul style="list-style-type: none"> a) works through a consulting firm or other service provider (not usually a staff agency) b) is assigned to deliver advice or consultancy and the contract states specific “deliverables” typically within a given time frame c) the consultant does not come under the day-to-day management of the NHS body, but works under their own direction or under a line manager of the consultancy firm <p>this will generally be a supply of</p>
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	professional services and provided the usual COS conditions are met, will be eligible for VAT recovery.
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This advice outlines the general rules to apply, so please contact us for specific advice if you are still unsure.

3. Framework agreement award for VAT services

We are pleased to announce that CRS VAT Consulting has recently been awarded a framework contract through The East of England Collaborative Procurement Hub (“EOECPH”) to provide VAT services as part of a wider analysis and reconciliation framework. The Contract was tendered by EOCPEH on behalf of NHS bodies in that region, but also covers the South East Coast CPH, Procure, London Procurement Programme and Re;Source. We understand that the agreement will also be offered throughout other procurement hub regions.

This contract means all of the NHS Trusts, Primary Care Trusts, NHS Foundation Trusts and Health Authorities within these hubs can benefit from our range of VAT services at competitive prices without the need to go through a long tendering process.

Since 2002 CRS VAT Consulting has grown to become a leading provider of VAT services to the NHS. We have achieved this by consistently identifying increased levels of VAT recovery for our NHS clients and offering a flexible, professional service. We already work for a large number of NHS bodies within the procurement hub regions and now look forward to being able to extend our services to a wider NHS audience. As a firm of chartered tax advisers, the greatest value we provide to our NHS clients is the level of unrivalled VAT knowledge and expertise gained through experience within the NHS and commercial sectors. This expertise translates into higher levels of VAT recovery.

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