

September 2005

MONTHLY NHS VAT NEWS BULLETIN

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1. Contracted-out services headings 45 and 53

Following consultation with the DoH and HM Treasury, Customs have now published revised guidance on the scope for VAT recovery under these two headings.

This follows uncertainty about whether VAT can or cannot be recovered where property related supplies are involved.

Heading 45

Heading 45 is for the operation of hospitals, healthcare establishments and healthcare facilities and the provision of any related services.

Customs have now clarified that if these types of facilities are provided under a PFI or LIFT arrangement, VAT will be recoverable irrespective of the level of associated services, i.e., PFI or LIFT arrangements which are similar to a 'bare' commercial lease will be eligible for VAT recovery.

If however, the facilities are provided under arrangements which are not strictly PFI or LIFT, then they must include a full package of services necessary for the 'operation' of the facility for VAT to be recovered. This should be the core services of cleaning, maintenance, security, etc.

If there is a minimal level of services, no VAT will be recoverable unless the services are separate from the lease, in which case VAT can be recovered on the services only and not the lease.

Heading 53

Heading 53 is for the provision under a PFI agreement of accommodation for office or other governmental use, together with management or other services in connection with that accommodation.

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In the past Customs have generally allowed VAT recovery on leased accommodation which is 'similar' to a PFI arrangement. In this context, 'similar' was taken to mean serviced or managed accommodation.

In the latest guidance, Customs now state that VAT is recoverable under heading 53 only on PFI arrangements with a lease of serviced or managed accommodation. VAT is not recoverable under heading 53 on PFI arrangements with no services nor is it recoverable on non-PFI arrangements, unless the services are separate from the lease, in which case VAT can be recovered on the services only and not the lease.

Transitional Period

If an NHS body has been recovering VAT on an existing agreement without Customs' approval and the agreement does not meet the above criteria, continued VAT recovery will be allowed until 31 March 2006.

If however you have been recovering VAT on an existing agreement which does meet the above criteria, VAT can be recovered until the end of the lease.

Finally, VAT recovery on any pending or proposed contracts will only be allowed if they meet the above criteria.

2. Supplies of Staff

Customs have published a Business Brief (13/05 note 4) relating to the VAT Tribunal's decision in the case of University Court of the University of Glasgow.

In this case, the Tribunal considered whether arrangements for the University to provide medically-registered staff to work at NHS Trusts was a supply of staff (taxable at the standard-rate) or a supply of medical care (exempt from VAT). On the balance of the facts, the Tribunal concluded that the supplies in question were taxable supplies of staff.

This case does not establish any new principles of VAT law in that pure supplies of staff which come under the direction of the party receiving the supply are always taxable no matter what duties they perform. Where an employer provides the 'services' of its staff, the VAT liability follows the nature of the services, e.g. exempt medical services or standard-rated accounting or admin services, etc.

The crucial issue for the NHS is that Customs went on to confirm in their Business Brief that **VAT incurred on supplies of staff cannot generally be recovered under the Contracted-out services direction.**

VAT recovery under the contracted-out services direction is only allowed on the 'services' of staff (e.g. typing, secretarial, admin, accounting, nursing, etc) and not the pure supplies of staff.

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It would therefore be prudent to review the contractual arrangements for supplies of medical or non-medical staff (e.g. secondments), to see whether VAT will now be due in light of this decision and whether it is eligible for recovery. It would also be prudent to review supplies made by the NHS to consider whether output tax should be charged.

3. Business/non-business use of capital schemes – further VAT recovery potential

Following a recent ECJ ruling, NHS bodies may now have the opportunity to recover a higher proportion of VAT at the outset on capital schemes which have a mixture of business and non-business use.

The decision which has been accepted by Customs allows a VAT registered body which has both business and non-business activities to reclaim all the VAT 'up front' where some business use is made and then account for VAT on the non-business use of the asset over the economic lifecycle (as opposed to apportioning the VAT incurred between business and non-business use). This is known as the 'Lennartz' principle.

Customs have announced in Business Brief 15/05 that they would require the output tax charged under the Lennartz principle to be calculated over a maximum 20 year period based on straight line depreciation.

The scope for VAT recovery applies to schemes commenced from the date of Customs' Business Brief (9 August 2005). There may also be additional scope to retrospectively claim VAT on schemes commenced since 9 April 2003 provided the claim is made by 9 February 2006.

We would be happy to carry out a free assessment of your right to make a claim, whether it would be beneficial and assist in getting Customs' approval.

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