



NHS VAT NEWS BULLETIN

February 2007

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1. VAT Exemption for Medical Services

HMRC have concluded their review of the VAT liability of certain medical services following a consultation process and have issued Revenue & Customs Brief 06/07 detailing changes to the medical exemption. These will come into place on 1 May 2007.

The VAT changes are likely to impact mostly upon certain commercial, non-NHS activities undertaken by GP practices, doctors and consultants as **providers** of affected services and; insurance companies, the legal profession, employers and the public sector as **recipients** of the affected services.

The statutory healthcare activities undertaken by NHS Trusts and PCTs are not affected by the new rules;

these remain outside the scope of VAT. Statutory supplies of medical records also remain outside the scope of VAT.

Non-NHS medical services by NHS organisations are however potentially affected. If the principal purpose of the medical service is the protection, maintenance or restoration of the health of an individual then the services will continue to be exempt from VAT.

Medical services which are primarily for the purposes of enabling a third party to decide a course of action will be subject to VAT. This appears to affect mainly items such as witness/testimony reports, medicals for

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certain fitness certificates and some occupational health services.

If you undertake these types of activities and require assistance in determining the correct VAT liability in light of the new rules, please contact us.

2. Supplies of Health Facilities to Third Party Suppliers

Increasingly, NHS organisations are entering into arrangements with third-party suppliers to make facilities available to those suppliers to carry out private health services from NHS premises.

The assumption seems to be that no VAT is due on income received by the NHS for supplying facilities, however when examined in more detail, these may include a mixture of supplies which may be subject to VAT. Examples include licenses to occupy land/premises (exempt provided there has been no option to tax), staff or 'services' of staff (potentially standard-rated) and other ancillary supplies (utilities, cleaning, catering, consumables) which may be exempt or standard-rated depending upon the specific circumstances. This potential VAT headache is complicated further when the facilities are provided in return for a 'profit share', which is not clearly defined and could potentially be fully taxable.

If you are entering into such arrangements, please contact us at the earliest opportunity to determine the correct VAT liability.

3. Three-year Cap on Business Claims

Some VAT advisers continue to be promoting retrospective business claims going back further than three-years following various judgements that some aspects of the implementation of the three-year cap (now over ten years ago), was unlawful.

Although this may be relevant to some NHS organisations, any retrospective claims are limited to the current VAT registration of the NHS entity and claims must be based upon accurate, comprehensive records. Scope for VAT refunds beyond three years are therefore quite limited and the values are probably not worth pursuing in the majority of instances.

4. VAT on Agency Staff - 1

HMRC issued 'new' guidance last April regarding VAT recovery on agency fees. We included this guidance in a VAT update which was sent to all of our clients.

The guidance stated that VAT on agency commission fees for nurses can be recovered under COS heading 41 and VAT on agency fees for secretarial, telephone and clerical staff, IT staff, etc can continue to be recovered under COS heading 69. Accounting services can continue to be recovered under COS heading 1.

VAT on pure staff secondments and agency fees for medical staff other than nurses **cannot** however be recovered under any COS heading. This is generally doctors/locum services but also relates to other

medical staff such as radiologists, pharmacists, pathologists, etc.

Up until this guidance was issued, NHS organisations had always recovered the VAT on all agency staff irrespective of whether they were nurses or doctors, with the full knowledge of HMRC.

We would like to reiterate our advice to any Trust that has misunderstood the guidance or where it has not been disseminated to accounts payable staff to **cease recovering the VAT on doctors/locum agency fees.**

5. VAT on Agency Staff - 2

Currently, some employment bureaux (typically referred to as agencies) which provide staff to the NHS act as 'principals', charging VAT on the whole supply, whereas others act as 'agents', only charging VAT on the commission element.

As stated above, VAT on nursing and admin staff is generally considered recoverable in either case, however bureaux which act as principals for the supply of doctors/locums create a higher VAT cost to their NHS clients in light of HMRC's rules.

We have recently become aware that HMRC are now challenging the 'agency' treatment of some employment bureaux providing doctors/locums, stating that they should be accounting for VAT on the whole supply. This dispute is due to be heard in the VAT Tribunal.

If HMRC succeed, it could mean that all doctors/locums bureaux will be forced to account for VAT on the

whole of their supply, further burdening the NHS with non-recoverable VAT. We will keep you posted with developments.

And Finally....

If you are a client of CRS VAT Consulting, fees for our services are fully inclusive of unlimited access to our team for general VAT advice. In our experience, we are able to answer the majority of VAT queries immediately (i.e. if you telephone us) or within half-an-hour of the call. We aim to confirm all queries via e-mail or if required, by letter. You can also submit queries via e-mail, in writing or via our technical queries web-page at www.crsvat.com.

Of course, if a query is going to be more complex and can't just be answered in this way, then we would recommend it being treated as an ad-hoc consultancy assignment and if appropriate, we would agree any fees with you before proceeding any further.

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

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