



VAT Consulting

Chartered Tax Advisers

NHS VAT UPDATE

30 January 2009

1. CHANGES TO VAT RECOVERY ON PROFESSIONAL FEES

In our last few NHS VAT updates, we have informed NHS bodies about the 'potential' changes to the contracted-out services ("COS") VAT recovery headings, in particular heading 52.

There is still a great deal of uncertainty and speculation regarding the nature and timing of these changes, so in order to provide some clarity for our NHS clients we have sought to obtain some definitive guidance from HM Revenue & Customs ("HMRC"). The following is correct at the date of this publication:

- The revised COS heading 52 has been approved by HM Treasury, although it has not yet been published. HMRC do not know when the Treasury Direction will be published.
- The revised heading reads as follows: *'Professional advice or opinion on departmental efficiency or policy issues, legal advice or opinion and internal audit'*.
- When published, this heading will only allow VAT to be recovered on professional fees if they are of the type that fall within the definition above. This therefore seems to exclude professional services of architects, quantity surveyors and other advisers involved in capital projects. Services of solicitors and internal auditors will remain eligible for VAT recovery. Services of advisers relating to projects aimed at efficiency, cost savings and policy will remain eligible for recovery.
- It is not known if there will be a transitional period leading up to the change, however based upon previous Treasury Direction publications, this now seems unlikely. The rules are therefore likely to take effect immediately from the date of publication by the Treasury.
- Until the revision has been published, the current interpretation of COS heading 52 should be used.

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In summary, HMRC are relatively certain that the changes will come into effect at some point, however they do not know when. Given the level of uncertainty, NHS bodies would be wise to consider including the VAT on professional fees as **non-recoverable in future capital expenditure budgets**.

In our view, the speculation surrounding these changes has left the NHS in an extremely difficult position. The wording of this new heading still seems ambiguous and open to interpretation and there are likely to be a large number of services on which the future VAT treatment will be unclear.

Please contact us if you wish to discuss how these important developments will affect you.

2. THREE YEAR CAP “FLEMING” DEADLINE

As outlined in previous updates, we are in the process of submitting ‘Fleming’ VAT claims for NHS Trusts prior to the 31 March 2009 deadline. HMRC accept that any claim will be based upon estimating/extrapolating more recent accounts information and we have a range of methodologies and practices in place to extract the relevant information and formulate a realistic claim relating to a number of key areas.

Some of the claims that we have submitted so far have exceeded £1m.

If you have not yet considered whether a Fleming claim is relevant for your NHS organisation, please contact us as soon as possible. We would be more than happy to visit at short notice and formulate a claim prior to the deadline.

3. EXCESS CAR PARKING CHARGES

HMRC recently issued a Revenue and Customs Brief explaining their change in policy on the VAT treatment of excess charges for car-parking.

Previously, HMRC considered that in non-local authority car parks (including NHS operated car-parks), excess parking charges were additional consideration for a supply of parking and therefore subject to VAT. However, they have now reconsidered their position and state in the Brief that:

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...where a car park operator makes an offer of parking under clear terms and conditions, setting punitive fines for their breach, the fines constitute penalties for breaching the contract, rather than additional consideration for using the facilities.

The result of this is that many excess car parking charges will be treated as outside the scope of VAT for all car-parking operators including NHS organisations

Excess charges not subject to VAT

The penalty charges that will no longer be subject to VAT are those that are levied where a driver is in breach of the terms of the contract. The commonest situations where a driver may be in breach of the contract are:

- no parking ticket on display
- underpayment
- overstaying purchased parking time
- returning within a specified time
- parking outside marked bays
- parking in bays set aside for disabled drivers or parents with children

Excess charges subject to VAT

Where the terms and conditions make it clear that the driver can continue to use the facilities after a set period upon payment of a further amount without being in breach of the contract - for example, no charge for an initial three hours parking but £40 if that period is exceeded - then the payment will be consideration for use of the facilities and subject to VAT.

Going forward

From now on, income from car-parking should be split in order to identify the non-taxable excess charges and VAT should only be declared on the taxable charges. If Trusts have accounted for VAT on excess car-parking charges in the past, (which is likely), it will be possible to make a claim for the overpaid tax, subject to the three-year cap. There may also be scope to submit a further claim for overpaid VAT under the 'Fleming' rules, i.e. relating to car-parking income up to 1997.

4. CHANGES IN HMRC MANAGEMENT OF NHS TAX

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HMRC have recently announced changes to its management of tax for Public Sector bodies including some of the larger NHS bodies. They have created a new national team within local VAT office compliance and have appointed Customer Relationship Managers (“CRMs”), who will be responsible for the day-to-day contact between HMRC and Trusts with a view to improving communication and tax compliance.

We have discussed these developments with the current national NHS VAT Team within HMRC and can confirm that they will still be dealing with technical VAT issues for the NHS, however in some instances the direct contact may be via the CRM.

5. VAT ON MORTUARY INCOME

Changes which came into effect from 1 May 2007 meant that certain medical services which were previously treated as exempt from VAT became subject to VAT at the standard-rate. We announced in our previous bulletins that these changes affected NHS Trusts which generate non-NHS business income from activities such as clinical trials or occupational health services.

One of the most relevant areas of change for the NHS was ‘*post-mortem examinations and reports*’ provided to coroners, which became fully taxable from 1 May 2007.

Some NHS bodies may still not have changed their VAT treatment of this income and this may result in HMRC assessing for the undeclared output tax to-date. As this income is usually invoiced to councils and local authorities which are able to recover the VAT, Trusts would be advised to consider issuing additional invoices for the VAT not charged to-date and start declaring VAT correctly in the future.

This change in VAT treatment also creates a right to recover input tax on certain costs associated with this income generation area.

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. 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.

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