



# VAT Consulting

*Chartered Tax Advisers*

## **MONTHLY NHS VAT UPDATE**

**November 2008**

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### **1. Removal of the VAT staff hire concession**

As outlined in our previous updates, the VAT staff-hire concession which is currently in place allows certain supplies of temporary workers by employment businesses (agencies) to exclude the wages element when charging VAT, i.e. VAT is only due on the commission (unless the commission turnover is less than the VAT registration threshold).

Some employment businesses have historically chosen not to apply the concession and have charged VAT on the whole value of their supplies, whereas others including many nursing and medical staffing agencies have adopted the concession. It was announced in the March 2008 Budget that this concession will be withdrawn from 1 April 2009, meaning VAT will be due on the full value of staff supplies by all employment businesses.

Historically, NHS bodies have always recovered the VAT on all agency staff with the full knowledge of HMRC, however over the last couple of years HMRC have tightened up on VAT recovery on agency staff under the contracted-out services ("COS") rules. NHS bodies are still able to recover VAT on supplies of nursing staff (including non-qualified nurses, healthcare assistants, etc.) under COS heading 41 and admin/clerical grade staff under COS heading 69. VAT cannot be recovered under any COS heading on the supplies of any other staff provided by an agency, such as doctors, locums, consultants, social workers, physiotherapists, senior IT staff, senior finance staff, etc.

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With regards to nursing staff and admin/clerical staff, the removal of the concession will only represent a cash-flow disadvantage because the additional VAT charged is still recoverable.

The removal of the concession will have a detrimental effect of increasing irrecoverable VAT on supplies by agencies which use the staff hire concession and which supply staff that are not eligible for VAT recovery. This is particularly applicable to locum and other healthcare staff agencies, where use of the concession is widespread.

It would therefore be prudent to assess the impact on your 2009/10 budgets and plan accordingly by:

- a) identifying which staff employment agencies you use
- b) identify which agencies currently adopt the concession
- c) differentiate between VAT recoverable and VAT irrecoverable staff supplies
- d) assess the potential increase in irrecoverable VAT

## 2. Potential changes to COS VAT recovery headings

In our April update, we informed NHS bodies about some potentially wide sweeping changes to the COS recovery headings. The current Treasury Direction on COS VAT recovery has not changed since December 2002, however HM Treasury has been 'reviewing the situation' concerning the list for a couple of years now. In advance of any revised Direction being published, HMRC announced changes last year to COS heading 14 and COS heading 37 with immediate effect.

It is widely expected that if or when the new list is finally published, there will be further restrictions to VAT recovery on agency staff, with the possible removal of COS heading 69. Also, COS heading 52 is rumoured to be clearly worded to restrict VAT recovery to a limited range of advisory services only.

This puts the NHS VAT regime more in line with other Crown bodies. Other speculation (although not confirmed) is that partial recovery of services such as quantity surveyors and architects would be in line with the proportion of VAT recovery on related capital projects.

We liaise constantly with HMRC regarding NHS VAT matters and can confirm that there is currently no date set for these changes to take effect. Any suggested dates for the implementation of these new rules is **pure speculation** at this point and HMRC expect that there is likely to be a notice period to allow NHS bodies to budget for the changes.

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There is no need to act at present with regard to these potential changes as they will not affect budgets immediately. Going forward, it **may** be prudent to allow a contingency for the possible non-recovery of VAT on these headings. Until the direction is published NHS bodies should continue to apply the headings currently in force.

### **3. Fleming claims**

In our January VAT update, we wrote about the House of Lords judgement in the cases *Conde Nast* and *Fleming*, which obliged HMRC to now repay VAT refunds accrued but not claimed for periods before 1996 right the way back to when VAT was introduced in 1973.

HMRC have since confirmed that this relates to underclaimed input tax and overpaid output tax. This represents an opportunity for NHS organisations to submit claims in areas such as private patient drugs (input tax) or cold take-away food (output tax) for these periods. Other areas are likely to be limited.

Realistically, due to the time lapsed and constant restructuring of the NHS over the years there are several 'hoops' to jump through in order to prove that a valid claim exists. There is however certainly scope for NHS bodies to submit claims and the potential values are likely to be higher for acute Trusts which traditionally have more business income.

This is something that CRS VAT Consulting is doing for all of our clients but we would be happy to hear from other interested NHS bodies with a view to submitting a claim on your behalf.

HMRC accept that any claim will be based upon estimating/extrapolating more recent accounts information. We have a range of methodologies and practices in place to extract the relevant information and formulate a realistic claim.

All claims need to be lodged with HMRC by the end of March 2009, so please contact us as soon as possible.

### **4. Charitable fundraising events**

NHS bodies or their charitable trustees often embark upon fundraising events. The VAT treatment of these events is an area which can often cause confusion and there are some circumstances where VAT exemption is appropriate for supplies but this is not always the case.

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Generally, VAT exemption only applies to those events which are promoted as being held primarily to raise funds. The exemption does not extend to regular trading activities but covers a variety of events such as a ball, annual lunch or dinner dance, etc. For example, an event of the same kind held 15 times or more in a year in the same location does not qualify for VAT exemption.

Charity 'challenge' events such as walking, cycling and other sponsored events to raise funds are likely to be affected by recent changes announced by HMRC. The types of events which are affected include those which are arranged to include travel and accommodation and require the participants to raise a minimum figure in order to participate. Although the changes took place on 31 July 2008, where events have been publicised or contracts have been entered into before this date the old rules should still apply.

Fund raising events that include a package of both travel and accommodation or more than 2 night's accommodation do not qualify for the fund-raising exemption and are therefore subject to VAT.

Please contact us for further details if you think that this affects your NHS body.

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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 (i.e. not out of a box) 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.

For further advice about items in this newsletter, or to find out about our comprehensive range of NHS VAT services, please contact us.

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