

CRS VAT Consulting - recovering contracted-out services ("COS") VAT on part of an invoice

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Some NHS Trusts have been advised in the past that where an invoice shows separate lines for different elements of a supply, these invoices cannot be apportioned or 'split' in order to recover VAT on the eligible COS part.

Although this may be true in some respects, this is not always the case as each supply and invoice needs to be considered on its own merits.

The aim of this newsletter is to clarify this point for our NHS clients and prospects in order to help maximise COS VAT recovery. Although not exhaustive, we have set out below some circumstances where it may be permissible to partially recover VAT on invoices for COS VAT recovery purposes.

Background - single or multiple supply?

There have always been problems in determining the correct VAT treatment of transactions consisting of separately identifiable goods or services and whether there is a single supply or a multiple supply made up of several elements. Usually, the problem concerns the VAT liability of supplies (e.g. standard-rated or zero-rated), however the same principle applies to whether VAT can be claimed or not on all or part of a supply.

VAT legislation provides no real rules on this point, so over the years tribunal and court decisions have produced general guidelines, the most persuasive of which is the ECJ decision in *Card Protection Plan Ltd*. The key points from this case are:

- Regard must be paid to all the circumstances in which the transaction takes place.
- Each supply of a service must normally be regarded as distinct and independent but a supply that comprises a single service from an economic point of view should not be artificially split - the essential features of the transaction must be ascertained to decide if the supply to a typical customer comprises several distinct services or a single service.
- There is a single supply in cases where one or more elements are to be regarded as ancillary services. An ancillary service is defined as something that does not constitute for customers an aim in itself but is a means of better enjoying the principal service supplied.
- The fact that a single price is charged is not decisive. If the circumstances indicate that customers intend to purchase two or more distinct services a single price will not prevent these being treated as separate supplies with different liabilities applying to those services.

Application to COS VAT

Considering the above criteria, where a mixed supply is evident and certain elements are for services which are eligible for recovery under COS, the VAT on that element can be recovered.

Conversely, where a single supply is evident, it would be correct to treat the VAT according to the principal element. If the principal supply is not eligible for recovery (e.g. goods), then none of the VAT should be claimed. If the principal supply is eligible for recovery (e.g. repair services involving fitting new parts), then all of the VAT can be claimed. The COS Treasury Direction does in fact state that VAT recovery is eligible on listed 'services and closely related goods', which allows VAT recovery in these circumstances.

Examples of mixed supplies where part of the VAT can be recovered

Given the circumstances, there cannot be a definitive list of what supplies can or cannot be apportioned, however examples agreed with HMRC include:

- Where an NHS body purchases equipment, any maintenance service supplied is recoverable when either supplied by the same supplier or a separate supplier. In these circumstances, the maintenance usually could have been purchased optionally or able to be purchased as a stand-alone service. This would indicate that it is permissible to recover VAT on the maintenance part of such invoices if separately itemised.
- Orthotic supplies - VAT on repairs and or adaptations to existing patient appliances is recoverable if the supply is primarily one of services as opposed to goods. Also, HMRC have agreed to VAT recovery on the repairs/adaptation element of invoices containing mixed supplies. The supply of bespoke footwear, appliances, wheelchairs specifically designed for a patient is not recoverable as this is considered a supply of goods.
- Capital schemes with elements of building repairs, cleaning or waste disposal. In these circumstances, HMRC specifically allow VAT recovery on a proportion of invoices, either using a line-by-line analysis, or by applying a published banding percentage. The invoices need not be itemised for apportionment to still apply.
- If a printing supplier includes printed documents and standard stationery on the same invoice, it is permissible to treat the printed items as a separate supply and recover the VAT on this element, again, if separately itemised.

Examples of single supplies where invoices should not usually be split

- Supplies of goods with itemised delivery - these are single supplies of delivered goods and no VAT is eligible for recovery under COS. The issue of delivery costs as being ancillary to the principal supply is well tested in the courts.
- On leases of equipment, it is usually possible to include or exclude the maintenance at the outset of a lease depending upon the customer's requirements. However, where an NHS body leases equipment, any maintenance service supplied is only recoverable if the maintenance is from a separate supplier, (apart from hire of vehicles and photocopiers when all the VAT is recoverable where maintenance is part of the supply).
- IT equipment with training, consultancy, etc - if the training relates merely to being shown how to use the equipment when initially purchased or leased, HMRC would consider the training element to be part of the one supply of equipment and cannot be split out. IT consultancy is recoverable but if it is inherent to the supply of software

or hardware then it may not be recoverable and the whole nature of the supply will need to be considered.

- Supplies of cleaning services with consumables - in these circumstances, the cleaning company is using the consumables to provide cleaning services, so the whole supply is eligible for recovery under COS including the consumable goods.

Summary

To summarise, it is certainly possible to apportion invoices for COS VAT recovery in many circumstances, but regard must be paid to the nature of the supply.

If your Trust has been advised not to recover VAT on a proportion of invoices under any circumstances, CRS VAT Consulting would be interested in helping you to achieve the correct VAT recovery going forward.

Getting added to our list

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

About us

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

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. If you no longer wish to receive this newsletter, please email us.

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