

VAT Penalty Regime – Further Guidance

In our newsletter of November 2010, we informed you about the introduction of VAT penalties for the NHS for the first time from April 2011. A copy of the November newsletter can be accessed from the following weblink:

<http://crsvat.com/vat-news.php>

To re-cap, the penalties are designed so that if a taxpayer takes 'reasonable care' when completing a return, they will not be penalised for an error. The penalties could range between 15% and 100% of the VAT but can be reduced or eliminated depending upon whether the error is voluntarily disclosed before HMRC discovers it (unprompted) or after HMRC makes enquiries (prompted).

HMRC are still yet to provide any further guidance on how they are going to apply the penalties in respect of the specific NHS rules, in particular contracted-out services ("COS") VAT. We have been told that further guidance is imminent and we will share this with our clients as soon as this happens.

In order to be prepared going forward, we believe it would be prudent to ensure that robust systems and procedures are in place to ensure that any VAT errors are minimised and disclosed where necessary.

What is 'carelessness'?

HMRC's expectation is that taxpayers will take reasonable care in ensuring tax returns, reclaims and dealings with HMRC are correct.

Whether a taxpayer has acted carelessly is somewhat subjective and will depend upon the circumstances, however the following are all possible examples of carelessness:

- Failure to keep records
- Failure to seek appropriate advice
- Failure to supply relevant information to a VAT adviser
- Failure to implement adequate procedures or systems to produce accurate tax information
- Estimating amounts entered on returns
- Not checking for implementation and failures in planning/technical areas

Taking reasonable care - further recommendations for you to adopt

Taking and acting upon advice from a competent and qualified expert is generally considered to be taking reasonable care.

As a matter of course, if not already in place, we would recommend all NHS bodies to set up a permanent electronic and paper file of all internal VAT procedures, HMRC correspondence and VAT advice.

This should include:

- Written procedures for completion of the VAT return
- A robust written procedure for making VAT journal adjustments to ensure that these are compliant with the penalty regime

- Written procedures for identifying all purchases from outside the UK and application of the reverse charge VAT procedures. We can provide free helpline advice on this topic
- Copies of all letters to and from HMRC (e.g. regarding business and partial exemption approvals, capital VAT approvals over £50,000, options to tax, etc)
- Copies of all VAT review findings and adjustments, VAT advice received and VAT newsletters.

In addition, the following actions should also be undertaken:

Review all sales and cash income to ensure that the correct VAT liability is applied. We have produced a checklist of all of the main areas of income generation and the current VAT liability to be applied. This should cover most areas, but if there are any areas of income generation which you are still unsure about, we would be happy to advise.

Ensure that any VAT recovery on capital projects meet HMRC requirements and any banding percentages used are justified. Also ensure that any capital schemes where VAT recovery exceeds £50,000 are disclosed to HMRC.

Ensure that any current or anticipated land and property transactions are considered for VAT purposes and ensure that any option to tax notifications are recorded, complied with and kept with the permanent VAT file.

Where you have exempt business income (e.g. private patient care or property rental) ensures that the partial exemption calculations and submissions are completed on time.

Review of any existing managed healthcare facility or managed laboratory contracts to ensure correct VAT treatment.

Review of any non-NHS third party arrangements where there are potential VAT issues (e.g. S75 agreements, other arrangements with local authorities, prisons, universities, charities or social enterprise companies).

Penalty mitigation by disclosure to HMRC

The potential penalties can be mitigated depending upon the timing and level of disclosure of errors and the level of co-operation with HMRC. There is a greater reduction for “unprompted” versus “prompted” disclosure. An unprompted disclosure is made at a time when a taxpayer has no reason to believe HMRC had discovered or were about to discover the inaccuracy concerned.

It must be noted that correcting an error in the next VAT return is **not** disclosure.

At present, there is no requirement to submit COS VAT adjustments to HMRC for their prior approval before adjusting the VAT return. HMRC have not yet said whether this would change from April, however under the normal commercial VAT rules, net errors not exceeding the greater of £10,000 or 1% of turnover, subject to an upper limit of £50,000, can be adjusted on a current VAT return.

If the error was caused by a failure to take reasonable care (or there is any doubt on this point) a separate disclosure may be necessary (or prudent) to ensure penalty mitigation.

If you have any questions concerning the above, please do not hesitate to contact us.

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.

Victory Way, Admirals Park, Crossways, Dartford , DA2 6QD

Tel: 0845 686 0400 - Fax: 0845 686 0410

Email: info@crsvat.com - Web: www.crsvat.com

