

VAT in *BLACK & WHITE*

NHS VAT UPDATE: August 2009

Introduction

Berthold Bauer is the Healthcare TAX specialist, working with the National Health Service throughout the United Kingdom.

The NHS '**VAT in Black & White**' provides recent VAT and Tax news and developments which affect all NHS bodies.

This issue

PCT Provider Arms	Supplies of Staff
New Treasury Directions	Outstanding Debtors
FT Corporation Tax	FT CIS Tax
Clinical Property	Changes to VAT
Managed Services	

PCT – Provider arm restructuring

It is important that PCTs should consider the VAT impact for Provider arms 'separating' away from their Commissioning bodies.

Many Providers are evaluating the merits of evolving in to Social Enterprise Trusts (SETs). We understand that these organisations will no longer be NHS bodies and will not be permitted to utilise and benefit from the 'generous and unique' Contracted Out Service VAT rules. On the supposition that the provider arms incurs the majority of VAT normally recovered, there will be an instant significant shortfall and **large financial disadvantage** by opting out of remaining an NHS body.

Obviously there are many other factors for PCTs to take a measured view and we'll look to assist these developing originations with their Tax planning over the coming period.

Re-billing of staff costs

Further to the above guidance, where an NHS body seconds staff to a non-NHS body (e.g. an SET), VAT can often be chargeable on the value of the supply. An 'SLA' contract, or non-profit motives, does not negate a taxable supply. NHS bodies should seek advice for any proposed staff contracts between Provider and Commissioning organisations, or check any other supplies of staff to other non-NHS organisations. Failure to do so could result in **large liabilities**. Providers also need to consider the 'added' cost of VAT to staff seconded from an NHS Commissioning arm.

New Treasury Directions

The introduction of the revised Treasury Direction headings appears to have been postponed/held pending a number of discussions and technical issues. It is still too early to speculate to if or when they may be introduced.

Outstanding debtors

- **Bad Debts:** many Trusts do not take advantage of the Bad Debt relief HMRC offer against outstanding debtors where they are overdue by six or more months. Although rarely substantial, and applicable only if Output Tax was originally paid over to HMRC (as opposed to when received), it is worth having controls in place to ensure utilisation and to aid cash flow. Assistance can be sought from your Tax advisor for retrospective identification and in-house administration.
- **Overstating Partial Exemption liabilities:** where a Trust receives Exempt income, unless they are *de minimis*, they will have a periodic repayment owing HMRC. We have commonly found that Trust's advisors are including Exempt income (e.g. Private and Overseas Patients) without accounting for write-offs etc. This is creating, sometimes quite sizeable, **overpayments to HMRC**. For further advice please contact Berthold Bauer for assistance.

Corporation Tax for Foundation Trusts

Further guidance on Corporation Tax is still pending from HMRC. It is still likely tax may be due on profits relating to commercial income generation, other than those which are ancillary to primary health care provision (e.g. Catering, Car Parks etc). Clearly entrepreneurial activities may be subject to Corporation Tax subject to the relevant *de minimis* limit [£50,000]. Further guidance will be issued once more information becomes available.

FT s - Construction Industry Scheme

Legislation dictates that NHS Trusts have an obligation to make CIS returns when over the specified thresholds. However, it does not appear NHS Foundation Trusts are required to participate as they are not strictly 'NHS Trusts'. Before ceasing, written public guidance from HRMC is pending and you may wish to wait until HMRC have published their advice.

The above information is for guidance purposes only and should not be acted on without proper consideration of the particular circumstances or seeking Professional advice. Every effort has however been made to ensure statements are as accurate as possible

If you have any VAT enquiries, Berthold Bauer are happy to offer their FREE expert VAT advice

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Lease Property charges – clinical definition?

HMRC's policy department has recently provided a definition to what qualifies as 'Clinical Accommodation' when all other conditions are met for recovery under COS Heading 45. For example, is a medical records department, or health visitor's station, regarded as a clinical or a non-clinical [office] environment? HMRC's policy is that clinical accommodation is defined as healthcare facilities where the main purpose of the building entails patients' attendance (e.g. clinics, surgeries etc.) The two examples above would therefore now fail this test.

Changes to VAT

- Psychologists:

Many Psychology services are now classed as Exempt of VAT. Trust's who have been accounting for Output Tax on sales are no longer required to charge VAT on these Exempt supplies from 1st July 2009.

- VAT Rate changes:

HMRC have produced a thorough guide for the re-introduction of the standard rate of VAT to 17.5% from 1st January 2010. This can be accessed from <http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-changes.htm> or by contacting Berthold Bauer. The most important aspect is the anti-forestalling legislation to 'catch' artificial arrangements to reduce the VAT rate on goods or services to be provided after the rate reverts. With NHS usual best practice and governance we foresee no real issues.

- 3 year rule changed to 4 year rule:

The 3 year rule for Business Activity VAT is being changed to 4 years (for all commercial businesses). This was introduced from the 1st April 2009 but will have full effect from the 1st April 2010. As long as Business Activity and Partial Exemption reviews are up to date there will be no or little impact for NHS bodies for the foreseeable future.

Managed Services

As a reminder, a managed service is generally deemed VAT recoverable if the supply is one of services with goods/equipment included, and not a supply of goods/equipment with some services included. For example, a contract with the supplier's staff present, operating and supporting the equipment may qualify; however, the rental of equipment with some maintenance may not.

We are aware of some suppliers 'mis-understanding' this concept and suggesting their contracts are recoverable. Contracts can often be sizeable and we advise some initial advice is sought before potential liabilities accrue.

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