

VAT in *BLACK & WHITE*

NHS VAT UPDATE: March 2010

Introduction

Berthold Bauer is the Healthcare VAT & 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

EU Purchases	VAT Journals
FT Corporation Tax	Private Patient Expenditure
Fleming claims update	Online VAT Returns

EU Reverse Charge – for purchases from 1st January 2010

Continuing on from previous guidance, we have received clarification from HMRC that most, if not all, NHS bodies are to be regarded as mixed 'non-business/business' organisations (as opposed to being wholly non-business). This appears to be HMRC's stance even if you're a PCT with virtually nil commercial income, or are making a purchase for a specific non-business purpose (e.g. the provision of NHS Healthcare). We understand this stance may be under review with HMRC pending an internal review.

For now, and to assist NHS bodies with the correct VAT treatment to apply to intra-EU purchases, please find below a Print-Out flow chart providing general rule-of-thumb to this difficult area. For any uncertainties, or for clarification, please contact us for free advice.

NHS VAT – subsequent COS adjustments (journals)

We are increasingly encountering NHS Trusts (and others) who are examining inputted Account Codes (expenditure categories codes) made against payments and indiscriminately applying the Contracted Out Service rules against the coded descriptions. It should be noted that this is an extremely inaccurate method and normally swiftly accrues significantly liabilities. For example, budget holders may commonly code parts/goods ordered against a 'maintenance' code because they intend to undertake an in-house repair. This is a supply of goods and no VAT recovery would normally be permitted. We strongly recommend that such methods should not be practiced.

Corporation Tax postponed until 2011

Foundation Trusts should be aware that the introduction of Corporation Tax has been postponed to at least the 1st April 2011. We are all waiting on HMRC guidance to ascertain the exact rules applicable to FTs and for the actual introduction date.

Private Patient Area expenditure

For NHS Bodies with significant expenditure (e.g. capital) against Private Patient areas, VAT recovery is normally blocked as these areas relate to a VAT Exempt activity. We have been assisting NHS Trusts with supplementary in-depth analysis to ascertain any permitted VAT recovery (with some significant success) and would be interested in examining any such costs you may have incurred.

'Fleming' claims update

HMRC recently hosted a meeting with the purpose of engaging with advisors and to clarify HMRC's reasoning and opinion regarding VAT reclaims submitted for the periods 1973 to 1997. It is now clear that HMRC take the following positions:

- A) Ultimately, they consider the Wellington case was wrongly decided by the Court of Appeal in 1997
- B) Custom's position is that in-patients drugs and prostheses are a component of the healthcare provided and are thus a single exempt supply. They also believe if drugs and prostheses could be viewed as separate supplies, they still fall under compulsory exemption as ancillary services
- C) The principle of *res judicata* [decisions can only be challenged on appeal or by a decision of a higher court] does not apply. The Bupa Wellington decision should be mis-applied as it is contrary to the intention of EU Community law [that is, healthcare is exempt and does not have a tax burden on the end user]

To summarise, it appears HMRC consider that an 'accepted', possibly flawed, decision [i.e. Bupa Wellington] should not be perpetuated; and accordingly taxpayers do not have the right to go 'back in time', using the prior decision as the basis of their claim. In the meeting it was made clear that HMRC are prepared to litigate and robustly defend their position. Other elements of previously submitted Fleming claims [e.g. catering] will continue to be progressed once the entitlement issue [i.e. NHS Trusts v's HAS] is resolved.

Online VAT Returns

The NHS will have a requirement to submit online VAT returns from 1st April 2010. However, everyone is still awaiting direction from HMRC as their system will not accept VAT21 forms. We'll update you as soon as a decision has been made.

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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PRINT OUT SHEET

1st January 2010+

Intra-EU purchases made by NHS Bodies

Chart excludes electronically supplied services and transactions between wholly non-business organisations.

This chart should be interpreted as a generalisation and not definitive. It should not replace seeking of professional advice where appropriate.

