

Public Sector

Tax Forum

NEXT MEETINGS OF THE FORUM

10.30 am on
Thursday 11th
February 2010,
Leeds Financial
Solutions Centre.

10.30 am on
Thursday 24th June
2010, London West
End Financial
Solutions Centre

NEWSLETTER – WINTER 2009/10

CORPORATION TAX POSTPONED

The implementation of Corporation Tax for Foundation Trusts, originally due in April 2010, has been postponed until at least April 2011. It is the opinion of Forum representatives that there is no appetite for the introduction of this measure, but this may leave HMRC open to a legal challenge from the private sector on the grounds of unfair competition. To forestall this and ensure that there is a level playing field, fresh proposals may be announced which could apply to all NHS Trusts.

Talks have taken place between the Forum and Monitor on this issue and both organisations will keep a watching brief on developments with HM Treasury. If fresh proposals are brought forward, members will be notified and an appropriate response will be made.

FTS ARE EXEMPT FROM THE CONSTRUCTION INDUSTRY SCHEME

HMRC has confirmed to the Forum that Foundation Trusts are not required to operate the Construction Industry Scheme. This clears up previous confusion and as a result some FTs have already de-registered.

CONTRACTED OUT SERVICES

Responses received to a survey of PSTF members show that losses to Trusts from the restriction on eligibility for recovering VAT on certain contracted out services and the ending of the staff hire concession are costing them up to £600,000 per year. Using these returns, a calculation can be made of the estimated total cost to the NHS of the changes which are expected to be more than the £26m estimated by the Department of Health. This amount of lost VAT needs to be found from somewhere.

Using these figures and others, the Forum will make an estimated calculation of the overall cost and consult with members on the next step.

RETROSPECTIVE VAT CLAIMS – FLEMING/CONDE NAST

Talks have been taking place between DoH and HMRC over who has the right to receive the benefit of the retrospective VAT claims being made following the Fleming/Conde Nast case. In some cases, both a SHA and a Trust have submitted a claim for the same period. HMRC asked for detailed advice from DoH and this has been supplied, but there is still a question as to whether Trusts will receive any proceeds. The Forum is unaware of a legal opinion that states that SHAs should be the recipients. A stalemate appears to exist which is holding up claims.

The Forum will make representations to HMRC to urge it to settle the issue and pay the reclaimed VAT to Trusts, at least from the date the Trust became a separate legal entity.

COMPARING THE TAX IMPACT ON NHS TRUSTS AND THE INDEPENDENT SECTOR

Following questions raised by Forum members over whether a level playing field exists between Trusts and the private sector when it comes to the impact of taxation, a paper prepared by the Office of Health Economics has been circulated to members. This compares in some detail the taxation treatment of NHS and private providers and comes to the conclusion that independent sector providers face a cost disadvantage compared with NHS Trusts when supplying non-emergency NHS treatment. The paper suggests this arises because of the under-funding of NHS pensions which gives Trusts a 6%-7% advantage, a 2% to 4% benefit because of the impact of Corporation Tax reducing the post-tax rate of return for private companies, a 3.5% benefit because independent providers are not able to reclaim VAT to the same extent and finally up to 1% of cost benefit arising from lower cost to NHS Trusts for borrowing from the Exchequer.

The Forum is concerned about the assessment of the costs and considers that the report still raises questions about a level playing field. The Corporation Tax issue is, for example, taken into account in the tendering process. Also, issues such as generally higher NHS salary levels and the administrative and reporting cost burdens within the NHS are not taken into account. Certainly aspects of the report are open to challenge.

Members are asked to comment further on the report.

SOCIAL ENTERPRISES

Where Trusts are looking to transfer some of their activities (e.g. provider services) to a social enterprise business, it is becoming apparent that the cost implications are not being fully considered. Concern about these has caused some potential transfers to be put on hold. The Department's view is that Trusts transferring activities to new social enterprise businesses have to live within the normal VAT rules and these cannot be changed, despite an increase in VAT costs.

RETURN OF VAT TO 17.5%

The standard rate of VAT has now returned to 17.5%. Trusts should ensure that they apply the correct VAT rate to cash, salary deduction and invoiced income from 1 January 2010.

VAT ON NON-UK SUPPLIES

The rules have changed regarding the recording of VAT on purchases from overseas suppliers. It has always been the case that VAT has to be accounted for on goods purchased from EU suppliers (via the acquisition tax procedure in Box 2 of the VAT return) and paid directly to HMRC on goods imported from non-EU suppliers. In addition, VAT has been due under the reverse charge procedure (Box 1 of the VAT return) for a range of services purchased from all overseas suppliers. The reverse charge procedure has been extended to additional services from 1 January 2010. If your Trust purchases goods and services from overseas suppliers you should ensure that you are following the correct procedures.

SEMINAR

The possibility of the Forum hosting a day seminar on tax issues is in the preparation stage. Any comments from members regarding content, speakers, workshops and venue will be welcome.

Visit our website - www.pstf.org

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