

Public Sector Tax Forum

Newsletter Summer 2007

VAT TREATMENT OF CLINICAL ACADEMICS – NEW MOU ISSUED **After some delay, a Memorandum of Understanding governing the VAT treatment of supplies of services by clinical academics to NHS Trusts has now been issued by HMRC.**

The Public Sector Tax Forum had been active in making representations about the issues raised by the University of Glasgow VAT Tribunal ruling that VAT should be levied on charges made by the University to NHS bodies for the services of clinical academic staff which could not then be reclaimed by NHS Trusts.

This caused significant concern amongst Trusts about the possibility of retrospective tax demands from HMRC and budget allocations for the future. The Forum lobbied MPs and Ministers to hasten a resolution to the uncertainty that the ruling caused and the issue was taken up in a Parliamentary Committee.

The MOU states that, where the staff concerned are engaged in both teaching and/or research and the delivery of patient care, any recharges for their services from universities to NHS bodies should be outside the scope of VAT, provided that "joint working arrangements" exist.

This does not just refer to where joint contracts of employment are in place but covers a range of situations where cooperation exists between the NHS body and the university in managing various aspects of the individual's employment.

HMRC has also confirmed verbally that as long as the conditions of the MOU are met there should be no retrospective VAT charges by universities to NHS bodies and if any NHS bodies have received VAT charges from universities then these should be challenged.

Not Applicable in Wales

Currently the MOU is applicable in England only and, at the last meeting of the Forum, it was agreed that representations will be made to the Welsh Assembly Government to urge it to agree a similar MOU for Welsh Trusts.

AGENCY FEES

Following the completion of the review of the contracted out services direction by the Treasury there appears to be no mention of agency medical services.

A revised direction has yet to be issued but major changes have been notified to government departments concerning IT services and the maintenance and repair of equipment and vehicles. The Department of Health has said that it does not expect further changes to be announced.

This leaves unaddressed the ridiculous anomaly of Trusts recovering VAT relating to nursing agency services but not when receiving services of doctors, locums and other medical professionals. The financial impact of this is increasing in significance with more staff being employed on a temporary basis and more services being contracted out. The levying of VAT means large amounts of money are leaving the NHS. One Hospital Trust member of the Forum estimates that they will hand over about £400,000 in VAT this year for externally supplied services, which they are unable to recover. The Forum agreed at its last meeting to gather as much evidence as possible about the impact this is having on Trusts and then to make this known to MPs, Ministers and officials. It will also seek support for its lobbying on this issue from organisations representing professions allied to medicine and others who will share the concern of Trusts.

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Please can you let us know how much you expect to pay in unrecoverable VAT on agency fees for the supply of the full range of medical and administrative services. This excludes the supply of nurses services. Please email your approximate figure for 2006-07 and an estimated figure for 2007-08 to mail@pstf.org

VAT APPEAL MECHANISM

HMRC has confirmed that short of a Judicial Review, there is no independent mechanism to resolve disputes over disputed contracted-out services VAT claims.

The Forum had raised this issue with HMRC following the relaxation in its policy allowing appeals to the VAT and Duties Tribunal where the claim being disputed relates to business activities. In a letter to the Forum, HMRC explains that there is a clear procedure for dealing with COS related disputes which involves initially asking the original officer who made the decision to re-consider, then appealing to their line manager and ultimately to the team leader. If a Trust is still dissatisfied, it has the option of referring the matter to the Adjudicator, requesting intervention from the Department or seeking a Judicial Review.

It was agreed that short of a Judicial Review, which would not be viable in most cases, this meant that there is still no independent element in the appeal process.

This was considered by the Forum at its last meeting to be unacceptable and it was agreed that, as the change of policy over business activities came about as a result of an appeal made to the Tribunal by a Trust, so a test case should be identified and submitted to HMRC. It may be that this could go all the way to a Judicial Review to provoke a change in policy.

If any Trusts have a case where they would like to seek an independent adjudication, please get in touch and let us know at mail@pstf.org

PCT Payment for GP Equipment - Where PCTs pay for the cost of equipment for GP clinics, the VAT is not recoverable. A recent internal HMRC meeting considered a change of policy so that if there is a statutory requirement for a PCT to incur costs, then it should be allowed to recover the VAT. HMRC has yet to publish its final guidelines.

Add your voice. To join the Forum e-mail: mail@pstf.org

NEWS IN BRIEF

Corporation Tax - With no revised guidelines from HMRC on how Foundation Trusts should account for Corporation Tax, there is continuing uncertainty. The Forum will press for these to be issued as soon as possible in draft form so that they can go out for consultation.

Procure 21 – P21 schemes receive preferential treatment from HMRC in that they are able to recover VAT paid on professional fees for design and build, unlike non-P21 projects. The view expressed at the last Forum meeting was that there should be equality in the way the VAT rules are applied. Evidence will be gathered of examples and the case then pressed to HMRC.

MEMBERSHIP AND MEETINGS UPDATE

Each time notices of meetings of the Forum are circulated, we pick up new members. We now exceed 100 Trusts in membership with the diversity widening to include Acute, PCTs, Mental Health Trusts, Ambulance Trusts and Foundation Trusts.

To encourage the maximum involvement of Trusts in meetings we are moving them around the country. The last one was in London, the next one on 11th October will be in Leeds and on 8th February, we will be in Birmingham. Both meetings will start at 10.30am and conclude with a buffet lunch.

If you would like to attend either or both of these meetings, please let us know on mail@pstf.org