

Minutes

HFMA VAT Technical Sub-Committee



CIPFA, 77 Mansell Street, London E1 8AN

27 September 2017

MEMBERS PRESENT

Ian Hanley – Chair

Michael Creaton

Ian Dean (T)

Colin Hall

Sarah Hogan

Michael John

Paul Jones (T)

Arnold O’Bieme

Rachel Owen

Steve Rourke

Shelley St John

Sally Wilson

HFMA STAFF/GUESTS PRESENT

Mark Jenkins

VAT profession

Phil Simmons

Richard Lodge

HMRC

Senaka Attygalle

Mike Barlow

Stuart Grant

David Ogilvie

Michele Rapier

T=dialled in by telephone

1. Welcome, apologies for absence and membership issues

Ian Hanley welcomed everyone to the meeting. Apologies were received from Edward Andrews, Gary Mincher, Anthony Robson, Ian Moules and David Smith.

Rachel Owen, NHS England, Michele Rapier, HMRC and Senaka Attygalle, HMRC, have joined the Committee. Gita Raja's application to join the Committee was also approved. Gita is currently Deputy Chief Accountant at University College London Hospitals NHS Foundation Trust.

2. Minutes of the last meeting

The minutes of the meeting held on 14 July 2017 were considered an accurate record.

3. Terms of Reference

The Committee considered the revised Terms of Reference and approved the following changes:

- Role of Chair to be enshrined in the Terms of Reference; after the Chair has held the position for three years, a nomination procedure will commence so a new candidate has the opportunity to assume the role. Ian Hanley was reconfirmed as Chair from September 2017, therefore a nomination procedure will be activated in September 2020.
- Instead of having a formal Vice Chair, the Committee decided that when the Chair is unable to attend, those in attendance should nominate a Deputy Chair to steer the meeting.

Mark will amend and circulate the Terms of Reference for approval by the Committee.

MJ

4. Matters arising

4.1 3.2 Leased cars in the NHS

HMRC confirmed that an FAQ Note on salary sacrifice lease cars has been published which should now answer all queries. Any remaining issues not covered by the Interim Guidance Note or the FAQ Note should be raised with HMRC directly. Mark will publish the FAQ Note on TISonline.

MJ

Ian Hanley noted that friends and family cars were treated as a business activity and raised an issue where an employee, who was medically prevented from driving, was claiming that not being allowed a car under the same terms as any other employee was disability discrimination. HMRC said they would consider such instances and report back at the next meeting.

HMRC

4.2 **3.3 Error Correction and COS**

This item relates to whether corrections to COS claims should be classed as VAT errors and reported on the VAT652 form. Having received legal advice that HMRC has the authority to assess for COS errors and levy penalties, David Ogilvie informed the Committee that HMRC is still waiting for the Treasury's view on how to apply the rules. He will provide more information to the Committee once the Treasury has responded. HMRC

4.3 **3.6 Technical issues with the VAT Recovery Method – Partial Exemption Framework**

Stuart Grant reported to the Committee that HMRC had hoped to submit a revised draft Framework for consideration at this meeting, but feedback from policy teams had generated further work. It is hoped that a draft will be ready for the January 2018 meeting. HMRC confirmed that no major changes are planned (rather additions for clarity and minor amendments to wording) and that in the meantime the current Framework can be applied. HMRC

4.4 **3.7 NHS healthcare income via commercial entities**

This item relates to the VAT implications of, for example, a private body engaging in providing NHS patient care where that activity was previously undertaken by the NHS and where there is subcontracting of some elements to an NHS body. Paul Jones reported that this issue is ongoing as are discussions between the Department of Health and HMRC; the final position will be communicated to the Committee when ready. In the meantime, Mike Barlow mentioned a recently published NHS England document, *Contract Package: Questions and Answers*, which provides some useful information relating to accountable care organisations; Mike Barlow agreed to forward a link to Mark Jenkins for dissemination via TISonline. HMRC/MB/MJ

4.5 **3.8 Agency staff**

David Ogilvie informed the Committee that draft guidance has been prepared which will answer concerns raised in the original briefing note submitted to HMRC; the Committee's concerns related to whether direct engagement models for contracting for agency staff are recoverable under COS, and whether medical staff operating via personal service companies are providing a supply of staff or exempt medical services. Once the draft guidance has passed through HMRC's governance procedures (expected shortly) it will be circulated to the Committee. David Ogilvie reassured the Committee that no radical changes are being proposed. HMRC

4.6 **7. COS Heading 33 Library Services**

Paul Jones had agreed to map the spectrum of services with a view to producing a further briefing for consideration. Paul Jones agreed to circulate a briefing in time for the next meeting in January 2018. PJ

4.7 **7. VAT impact of commissioning support unit ('CSU') spin out of NHS England control**

Mike Barlow reported that the 'spin out' process is on hold, although confirmed that the issue relating to the expansion of the COS headings to allow for VAT reclaim on these services is still under consideration. Specifically, HMRC is in dialogue with a number of bodies and is also awaiting views from the Department of Health. Mike Barlow hopes to provide clarification soon. **HMRC**

4.8 **9. P22**

Mike Barlow reported that HMRC is consulting with NHS trusts on whether the new P22 National Framework should be subject to the same COS rules as P21. He will report back to the Committee once a position has been agreed, but cannot commit to a specific timeframe. In the meantime, it was confirmed that the existing rules apply. **HMRC**

4.9 **6. NHS pensions charge**

Following consultation, the Department of Health has decided to introduce a levy to cover the cost of administering the NHS Pension Scheme. The Committee requested that this item be discharged from the agenda for now and restored once more information is known. **MJ**

4.10 **7. COS Heading 14 – Computer services supplied to the specification of the recipient**

Phil Simmons is aiming to submit a briefing in time for the next meeting which will detail the Committee's concerns that the VAT principles under COS Heading 14 are being inconsistently interpreted and applied and will restrict future recovery. The briefing will also include a number of anonymised examples intended to assist HMRC's deliberations. Phil Simmons reiterated the point that this COS heading is causing concern among NHS trusts, while HMRC expressed a willingness to work with the Committee and the Tax Centre of Excellence in order to improve, where necessary, the clarity of the guidance. **PS**

5 VAT briefs

The Committee noted the circulated *Revenue and Customs Brief 2 (2017): VAT – Care Homes and Hospitals*, which has been released by HMRC as a result of the Pennine Care NHS Trust VAT tribunal decision, and agreed that this brief would impact most on those mental health facilities that provide residential accommodation, as the buildings will now qualify for zero rating. Those trusts affected can consult this guidance.

6 Brexit

David Ogilvie reported that currently the main government activity in this area relates to the preparation of the European Union (Withdrawal) Bill. In terms of the work of the Committee, no relevant issues were noted.

7 Any other business

7.1 Brockenhurst College ECJ VAT Tribunal Case

Michael Sheils enquired as to whether others on the Committee are pursuing Brockenhurst VAT recovery claims following the ECJ ruling. The Committee confirmed its view that the ECJ ruling has limited impact on the NHS and such claims are unlikely to be seriously considered by HMRC.

HMRC raised concerns that some VAT advisors are submitting claims on behalf of trusts where it is not clear that the trust is fully aware of the basis of the claim. They reminded the committee that the trust is responsible for any claims and may be subject to penalties if the claim does not have a valid basis. Trusts should ensure that they understand and agree with claims submitted in their name.

7.2 EU recharge

For information, Michael Creaton mentioned that his organisation had recently completed a reconciliation exercise on its VIES returns; while this proved to be difficult it was ultimately very useful. Mike Barlow confirmed that HMRC are able to provide information that they hold from EU returns on an annual basis which NHS bodies can check to see if they are picking up all the relevant invoices. It was noted that companies with a GB address and bank details but an EU VAT number are particularly difficult to identify.

8 Date of next meetings

The next meetings are scheduled as follows:

- 25 January 2018
- 24 May 2018
- 27 September 2018.

Item	Action	Allocation
4.1	HMRC 'FAQ Note' to be published on TISonline. Discharge from agenda.	Mark Jenkins
4.2	Further position to be communicated once Treasury's advice has been received.	David Ogilvie
4.3	Revised Partial Exemption Framework to be sent to Committee ahead of Jan 2018 meeting.	Stuart Grant
4.4	Paul Jones to provide clarification following consultation with HMRC.	Paul Jones
4.5	Draft guidance to be circulated once it has cleared HMRC governance process.	David Ogilvie
4.6	Circulate a briefing in time for the next meeting in January 2018.	Paul Jones
4.7	Communicate position once consultation with external stakeholders is complete.	Mike Barlow
4.8	Communicate position once consultation with NHS trusts is complete.	Mike Barlow
4.9	Discharge from agenda.	Mark Jenkins
4.10	Circulate a briefing in time for the next meeting in January 2018.	Phil Simmons