

Minutes



## HFMA VAT Technical Sub-Committee

CIPFA, 77 Mansell Street, London E1 8AN

25 January 2018

### **MEMBERS PRESENT**

Ian Hanley – Chair

Colin Hall

Michael John

Paul Jones

Rachel Owen

Gita Raja

Michael Sheils

Shelley St John

### **HFMA STAFF/GUESTS PRESENT**

Mark Jenkins

### **VAT profession**

Phil Simmons

Richard Lodge

### **HMRC**

Senaka Attygalle

Mike Barlow (T)

Stuart Grant

David Ogilvie

Michele Rapier (T)

David Smith

T=dialled in by telephone

## **1. Welcome, apologies for absence and membership issues**

Ian Hanley welcomed everyone to the meeting, including Gita Raja (new member). Apologies were received from Edward Andrews, Michael Creaton, Ian Dean, Sarah Hogan, Gary Mincher, Anthony Robson, Steve Rourke and Sally Wilson.

It was confirmed that Arnold O'Bierne has stepped down from the Committee.

Amanda Randall's application to join the Committee was also approved. Amanda is currently Assistant Financial Services Manager at Newcastle upon Tyne Hospitals NHS Foundation Trust.

Sally Wilson had raised the issue of whether it was necessary to rearrange the meeting scheduled for 24 May due to the demands of the 2017/18 annual accounts timetable on members' workloads; the timetable requires trusts and foundation trusts to submit their audited accounts by noon on Tuesday 29 May. A poll of members was taken and the majority indicated that 24 May remains the most convenient date.

## **2. Minutes of the last meeting**

The minutes of the meeting held on 27 September 2017 were considered an accurate record.

## **3. Terms of Reference**

The Committee approved the revised Terms of Reference, which now clarify the role of the Chair. Mark Jenkins will now pass on to the HFMA for approval by the Accounting and Standards Committee. **MJ**

## **4. Matters arising**

### **4.1 3.2 Leased cars in the NHS**

At the previous meeting Ian Hanley had 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. While unable to comment on the validity of any challenge under the Disability Discrimination Act, HMRC did reiterate the point that friends and family cars are treated as a business activity because the drivers are not employees. It was agreed that this item should now be discharged from the agenda. **MJ**

### **4.2 3.3 Error Correction and COS**

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 provided an overview of the revised Partial Exemption Framework which had been circulated prior to the meeting. While there have been no major changes (most of the revisions concern terminology, removing ambiguity and improving consistency) the revised Framework relaxes the position on small sectors and discourages the use of trial balance figures for estimating VAT incurred. Those organisations currently approved to use trial balance figures can continue to do so, however, existing published guidance states that any such agreements should be reviewed periodically, so new procedures will have to be established once the revised Framework is finalised and implemented. In the meantime, HMRC invited the Committee to return comments on the Framework by 1 March, with a final draft to be circulated to the Committee ahead of the next meeting in May. **Committee/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 still ongoing as are discussions between the Department of Health and Social Care (DHSC), NHS England and HMRC; the final position will be communicated to the Committee when ready. **PJ**

Rachel Owen enquired as to whether Wiltshire Health and Care LLP, which is an NHS partnership formed by three local foundation trusts and a designated accounting body, would qualify for Section 41 status. Mike Barlow agreed to conduct further investigations in order to establish whether it qualifies, although HMRC clarified that if this is a new category of organisation, then it would require consultation with the Treasury and legislation to be enacted before Section 41 status is assigned.

Mike Barlow also confirmed that discussions are still taking place around the Greater Manchester devolution of healthcare. VAT was a major issue but no solutions had yet been arrived at. **HMRC**

4.5 **3.8 Agency staff**

David Ogilvie informed the Committee that approval of HMRC draft guidance addressing the Committee's earlier concerns is still awaited; it is in the final stage of sign off and should be ready soon. Once cleared, it will be circulated to the Committee for comment. **HMRC**

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

Paul Jones outlined the circulated briefing which examines the scope for misinterpretation within this heading and what VAT should be recoverable on library services increasingly provided online. HMRC requested that examples are included in the briefing in order to facilitate consideration of all the issues and allow a better understanding of the perceived problems. Paul Jones agreed to draft additional content in time for the next meeting in May. **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 still on hold, and confirmed that the issue relating to the expansion of the COS headings to allow for VAT reclaim on these services is still under consideration. Mike Barlow hopes to provide clarification soon. **HMRC**

4.8 **9. P22**

Mike Barlow reported that HMRC is considering drafting a paper exploring the issues relating to the new P22 National Framework, and whether it should be subject to the same COS rules as P21. While HMRC could not commit to a specific timeframe for completion, the paper will be sent to the Committee for comment ahead of wider circulation. **HMRC**

4.9 **COS Heading 14 – Computer services supplied to the specification of the recipient**

HMRC considered the briefing submitted by Phil Simmons and acknowledged that COS 14 is a difficult heading which organisations have been struggling to interpret. With this in mind, HMRC requested that a small working party (comprising volunteers from the Committee only) be set up to discuss the substantive issues relating to this heading, with a view to establishing some common principles and an understanding of the correct terminology which would aid consistent application. Mark Jenkins will request volunteers from the Committee and pass their names onto HMRC as soon as possible. **MJ/HMRC**

**5 VAT briefs**

There were no relevant VAT briefs for consideration at this meeting.

**6 COS Heading 56 – ambulance trusts and radio services**

At the request of the HFMA, Ian Hanley raised the issue of VAT recovery with regard to ambulance trusts' radio services. HMRC confirmed that while VAT is recoverable on radio services deemed within the remit of the original contract, any subsequent changes, enhancements or additions considered outside the scope of the contract are not recoverable. HMRC confirmed that any trust which feels disadvantaged by its VAT arrangements in this respect can request an independent review.

**7 Making Tax Digital**

At the request of the HFMA, Ian Hanley also raised the issue of the Making Tax Digital (MTD) initiative and its implications for Section 41 bodies. MTD will come into effect from April 2019 and will require businesses with a turnover above the VAT threshold (currently £85,000) to keep their records digitally (for VAT purposes only) and provide their VAT information to HMRC through MTD functional compatible software. While Mike Barlow agreed to circulate a link to a consultation document providing more information on MTD, the Committee did express concern that they

were largely unaware of the implications of this initiative and that a consultation had been published. The Committee agreed that going forward 'Consultations' should be a standing item on the agenda, and Mike Barlow agreed to select those of interest for inclusion.

Mark Jenkins also informed the Committee that a representative of the HMRC MTD team is due to present at the next meeting of the CIPFA VAT Committee in March, and will forward any relevant information as appropriate. **HMRC/MJ**

## **8 Wholly owned subsidiary companies**

Paul Jones mentioned that the setting up of wholly owned subsidiary companies by NHS trusts/foundation trusts is causing much negative publicity from certain quarters – especially the fear that they represent 'backdoor privatisation' of the NHS. These companies, which trusts are establishing to ease budgetary pressures, can allow for VAT savings to be achieved as a consequence. They also allow for trusts to employ new staff on non-NHS terms and conditions with no access to the NHS Pension Scheme. Paul indicated, however, that from a DHSC perspective, this option is not seen to be a 'tax avoidance scheme' but reiterated that the founding of these companies must be driven by other strong commercial objectives in order for them not to fall foul of existing taxation regulations. DHSC wrote to all trust/foundation trust finance directors in September 2017 advising them of their responsibilities in relation to tax, and confirming that tax avoidance schemes should not be entered into under any circumstance.

Ian Hanley reminded the committee that these companies were outside the NHS divisional registration and organisations needed to ensure that VAT was properly charged on transactions with them.

## **9 Brexit**

The Committee did not note any new relevant issues.

## **10 Any other business**

### **10.1 Legal charges**

Ian Hanley enquired as to the VAT regime governing legal charges, specifically the difference between legal advice and implementation and the scope for recovery. The Committee's view was that legal services are recoverable, with the exception of representation in court by barristers which is not recoverable, as it has never been done by the NHS. NHS legal departments were one of the first services to be contracted out to the private sector, with the staff being TUPEed to legal firms. Many of the staff providing legal services to the NHS were originally NHS employees. Ian Hanley expressed concern that this was another area where HMRC were attempting to restrict VAT recovery which had always been allowed. David Ogilvie requested that Ian Hanley outline the issues in an email in order to allow further investigation.

**IH/HMRC**

## 11 Date of next meetings

The next meetings are scheduled for:

- 24 May 2018
- 27 September 2018.

Item	Action	Allocation
4.1	Discharge from agenda	Mark Jenkins
4.2	Further position to be communicated once Treasury's advice has been received.	David Ogilvie
4.3	Committee to return comments on Framework by 1 March, and then a further revised Framework to be circulated ahead of May meeting.	Committee/Stuart Grant
4.4	Paul Jones to provide clarification following consultation. Mike Barlow to investigate S41 status for Wiltshire Health and Care LLP.	Paul Jones/Mike Barlow
4.5	Draft guidance to be circulated once it has cleared HMRC governance process.	David Ogilvie
4.6	Include examples in original briefing ahead of May meeting.	Paul Jones
4.7	Communicate position once consultation is complete.	Mike Barlow
4.8	HMRC to prepare a paper on P22.	Mike Barlow
4.9	HMRC to establish working party to discuss COS14 heading.	David Ogilvie
7	Circulate MTD link, and add 'Consultations' as a standing item.	Mike Barlow/Mark Jenkins
10.1	Outline issues relating to legal charges for HMRC.	Ian Hanley/David Ogilvie