

Minutes



HFMA VAT Technical Sub-Committee

CIPFA, 77 Mansell Street, London E1 8AN

24 May 2018

MEMBERS PRESENT

Ian Hanley – Chair

Colin Hall

Paul Jones

Rachel Owen

Gita Raja

Amanda Randall

Anthony Robson

Steve Rourke (T)

Michael Sheils

Shelley St John

HFMA STAFF/GUESTS PRESENT

Mark Jenkins

VAT profession

Phil Simmons

HMRC

Senaka Attygalle (T)

Mike Barlow (T)

Stuart Grant

David Ogilvie

Michele Rapier (T)

David Smith

Claire Williams

T=dialled in by telephone

1. Welcome, apologies for absence and membership issues

- 1.1 Ian Hanley welcomed everyone to the meeting, including Amanda Randall (new member). Apologies were received from Edward Andrews, Michael Creaton, Ian Dean, Sarah Hogan, Michael John, Richard Lodge, Gary Mincher and Sally Wilson.

Gareth Lewis' application to join the Committee was also approved. Gareth is currently Assistant Head of Financial Services at Aneurin Bevan Local Health Board.

- 1.2 Ian Hanley informed the Committee that he has taken early retirement and will therefore be stepping down as Chair after this meeting. The Committee thanked Ian for his contribution over a number of years and wished him well for the future. Anthony Robson was then elected as the new Chair.

- 1.3 Ian Hanley reported that Liaison VAT Consultancy had contacted him recently complaining of their continued exclusion from the Committee while other representatives from the private sector (ie NHS SBS and QE Facilities) appear to be accepted. While the Committee appreciated the point that NHS SBS and QE Facilities undertake commercial activity, it was agreed that these organisations' ownership by the NHS, or NHS bodies, qualify them for membership under the provisions of the Terms of Reference. In answer to a further query from Liaison VAT Consultancy regarding the specific membership of Richard Lodge and Phil Simmons, the Committee again affirmed that these were in accordance with the Terms of Reference.

The Chair and the Chair-Elect agreed to formally respond to Liaison VAT Consultancy outlining the Committee's position.

IH/AR

2. Minutes of the last meeting

The minutes of the meeting held on 25 January 2018 were considered an accurate record.

3. Terms of Reference

The Committee approved the Terms of Reference as amended by the Accounting and Standards Committee. Mark Jenkins will further amend to reflect the election of the new chair.

MJ

4. Matters arising

4.1 3.3 Error Correction and COS

David Ogilvie informed the Committee that the Treasury is now content for HMRC to assess for COS errors and levy penalties. The Treasury, however, has also expressed an interest in getting involved in disputes between the Committee and HMRC which arise from assessment and touch on high level issues of principle, for example the interpretation of COS headings. The Committee agreed to this arrangement, provided that any disputes are first considered at these meetings

before being escalated to the Treasury. David Ogilvie will confirm this in due course.

HMRC

4.2 **3.6 Technical issues with the VAT Recovery Method – Partial Exemption Framework**

The Committee agreed that the Partial Exemption Framework, pending some very minor revisions, can now proceed to publication. Stuart Grant will co-ordinate within HMRC and confirm a publication date in due course.

HMRC

4.3 **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. In addition, there will be recommendations from the Health and Social Care Select Committee in June which will need to be considered. The final position will be communicated to the Committee when ready.

PJ

Further to discussions at the last meeting, it was also confirmed that Wiltshire Health and Care LLP, which is an NHS partnership formed by three local foundation trusts and a designated accounting body, is not a Section 41 body under current legislation, and would have to make representations to the Treasury in the first instance to obtain this status. Rachel Owen agreed to follow up with Paul Jones on this issue once the Health and Social Care Select Committee's recommendations are known.

RO/PJ

4.4 **3.8 Agency staff**

David Ogilvie reported 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. A copy of the draft guidance was sent to the Committee earlier in 2018 for information, but this is not for wider circulation.

HMRC

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

Paul Jones confirmed that he is in the process of drafting additional content for this briefing, including examples, and hopes to submit a finalised paper in time for the next meeting in September.

PJ

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

Mike Barlow informed the Committee that he is trying to arrange a meeting with representatives from NHS England in order to progress this issue, and will report back when more information is known. Rachel Owen offered to help set up the meeting, as there are CSU contacts in NHS England.

HMRC/RO

4.7 **9. P22**

Mike Barlow reported that HMRC has drafted 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. This paper is currently under review within HMRC and will be ready for circulation towards the end of June. **HMRC**

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

The HMRC COS 14 Working Party met on 28 March 2018 to discuss the main 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. HMRC would now like to meet with NHS Digital to further explore the issues under this heading; Paul Jones offered to help in arranging this meeting. **PJ/HMRC**

4.9 **7. Making Tax Digital**

Claire Williams outlined 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 (for more information see the presentation slides). The Committee's main concerns were as follows:

- The system does not appear to be responsive to the complexity and diversity of NHS VAT arrangements and recovery. There was a feeling among the Committee that there has been too much emphasis on the private/commercial sectors, whose VAT arrangements are more straightforward.
- The MTD plans will require the NHS to spend limited funds on bridging software to meet API requirements, requiring lengthy procurement, installation and testing.
- The timeframe requiring compliance by April 2019 is too ambitious and unrealistic given the requirements of the health sector.

Anthony Robson agreed to submit a briefing to HMRC outlining in detail the Committee's concerns (Committee members to send Anthony any items for inclusion in the briefing). Once ready, this should be emailed in the first instance to the MTD inbox and Mike Barlow. **AR/Cttee**

4.10 **10.1 Legal charges**

David Ogilvie confirmed that he had passed on Ian Hanley's email to the Treasury and will let the Committee have the response when received. This email outlined concerns that recovery of some legal services, previously allowed, is being restricted. **HMRC**

5 VAT briefs

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

6 Consultations

The Committee noted the *Off-payroll Working in the Private Sector* consultation, which was published on 18 May 2018.

7 Brexit

The Committee did not note any new relevant issues.

8 Any other business

8.1 NHS adjusting for bad debt relief (BDR)

Colin Hall reported that he had recently become aware of differences over how the NHS and its various advisors adjust for BDR on unpaid invoices, with some treating the monthly VAT return as the relevant period and others treating the COS year as the relevant period. It was agreed that the relevant period for making BDR claims is the COS year, and any VAT claimed in one COS year only needs to be reversed out at the end of the following COS year if it still remains unpaid.

8.2 HFMA Provider Technical Issues Group (TIG) meeting summary

While Ian Hanley confirmed that most of the topics discussed at the recent TIG meeting had been covered under Item 4.3, he did raise the issue that public health services now provided by local authorities should be treated as non-business as they are a 'statutory duty'. David Ogilvie invited the Committee to submit a paper to allow further consideration.

Cttee

9 Date of next meetings

The next meeting is scheduled for 27 September 2018. Mark will also confirm dates for 2019 and circulate among the Committee.

MJ

Item	Action	Allocation
1.3	Respond to VAT Liaison Consultancy.	Ian Hanley/Anthony Robson
3	Amend Terms of Reference to reflect election of new chair.	Mark Jenkins
4.1	Confirm process for Treasury involvement in disputes.	David Ogilvie
4.2	Proceed to publish Partial Exemption Framework.	Stuart Grant
4.3	Paul Jones to provide clarification following consultation. Rachel Owen to follow up with	Paul Jones/Rachel Owen

	Paul re. S41 status for Wiltshire Health and Care LLP.	
4.4	Draft guidance to be circulated once it has cleared HMRC governance process.	David Ogilvie
4.5	Include examples in original briefing ahead of September meeting.	Paul Jones
4.6	Meet with representatives of NHS England in order to progress this issue.	Mike Barlow
4.7	Circulate paper on P22 by the end of June.	Mike Barlow
4.8	Arrange meeting with NHS Digital.	Paul Jones/Mike Barlow
4.9	Send briefing to HMRC outlining Committee's concerns with MTD.	Anthony Robson
4.10	Send response to Committee once received from Treasury.	David Ogilvie
9	Confirm 2019 meeting dates with Committee.	Mark Jenkins