

Solving VAT problems with HMRC manuals

(Lecture B1144 – 12.37 minutes)

Case study

What is your strategy for dealing with a VAT question asked by a client? To misquote Agatha Christie's fictional detective Hercule Poirot: "You must always have order and method in your ways."

Let us imagine the following situation: a client telephones you and asks about the VAT liability of providing a transport service to a hospital, which involves taking people from their private homes to their local hospital for treatment in his vehicle. He understands the fees he charges the hospital will be exempt from VAT but wants to be sure this is correct?

Stage 1 - the legislation

The starting point is to review the legislation, particularly Schedule 9 of the VATA1994, which comprises all of the different groups of goods and services that are exempt from VAT. And a good start to our query: Item 11 of Group 7 (Health and welfare) confirms exemption applies for "the supply of transport services for sick or injured persons in vehicles specially designed for that purpose"

Stage 2 – the public notices

Our imaginary client is encouraged by the above reference but is unsure about the meaning of the phrase 'specially designed' as far as his vehicle is concerned. He also wonders if a person who is in good health but has preventative treatment for a condition is classed as a 'sick or injured person'

The relevant public notice reference on this part of the legislation is VAT Notice 701/31, headed "Health institutions supplies," specifically para 2.7. And this is the next important point: always be clear that the public notices mainly provide HMRC's interpretation to the legislation, although some sections (not many) do have legal force. This interpretation takes into account the results of past tribunal cases. To quote directly from para 2.7:

"2.7 Transport supplied or received by a qualifying institution

Transport services are exempt when the:

transport is an integral part of the exempt supply of care and treatment provided by a qualifying institution

transportation, by any provider, of sick or injured persons to or from a place of medical care or treatment, in a vehicle specially designed or adapted for the purpose"

There is a problem here: the notice has not given any additional information that would help address our client's two concerns. The second bullet point is mainly repeating the words in the legislation. We need another source of information.

Stage 3 - HMRC VAT manuals

The VAT manuals are used by HMRC officers to deal with challenges in their day to day work. I have encountered situations where officers refuse to accept information in the public notices, instead preferring to quote and utilise the VAT manuals. It is very positive that they are available for us to as a public record, so we should take advantage of them where possible. And good news, the HMRC VAT manual on "VAT Health" has a very helpful policy note at VATHLT5030, which gives further detail about what HMRC considers to be a 'specially designed' vehicle, including detail about ramps and secure clamps for wheelchair users. And it also defines 'sick or injured persons' very clearly as 'persons in need of or having just received medical care or treatment'

Note – some content in the HMRC manuals has been removed from public viewing on the basis that the department has claimed exemption within the Freedom of Information Act 2000. This content can still be seen by HMRC officers but not anyone outside of the department.

Search engines

You might be wondering how the above references can be found so easily. The challenge is to go to your favourite search engine and clearly enter "HMRC VAT manual" followed by the relevant topic eg "HMRC VAT manual transport services hospital patients." I have just done this and it not only alerts me to VATHLT5030 which I quoted above but also VATHLT5040, which gives details of when exemption does not apply eg hospital services provided by a taxi firm would not qualify for exemption because taxis are not 'specially designed' vehicles.

Clear strategy

In the three-stage analysis above, I have not suggested either telephoning HMRC's helpline service or writing to HMRC in Southend for a clearance letter. Putting aside the practical problems of getting to speak to someone in the modern world, my view is that a written audit trail to support a VAT outcome, such as the above analysis, gives much more legal certainty than a telephone call where issues could get confused with the interpretation of words, local accents or the use of jargon by the officer.

It is also important to recognise that HMRC will not 'rubber stamp' the VAT treatment of a particular deal. For example, builders sometimes tell their clients (wrongly) that they will only charge 0% or 5% VAT on a project if the customer gets written confirmation from HMRC that the lower VAT rate is correct. This is a flawed strategy – the builder should make his own decision on the VAT liability of his goods and services by consulting HMRC's public notice 708 or the VAT manual on construction services. The days of a local VAT office giving VAT rulings on specific contracts are a long way in the past. So, as a final tip, don't forget to copy and file the relevant HMRC information you use to solve a VAT dilemma, in case there is an HMRC query on a future compliance visit.

Contributed by Neil Warren