

1. SUB CONTRACTING & POTENTIAL MANAGEMENT FEES.

I have now had the opportunity to thoroughly read both the article in FE WEEK & Nick Linford's editorial comment. I consider that the following response is appropriate.

"VAT: ISSUE.'A fee or not a fee, that is the question'.

The contractual relationship between prime & sub-contractors must be carefully considered to identify if there is any other supply for VAT purposes, than that of the sub-contractor supplying services to the prime contractor.

VAT is a tax on supplies of goods & services by way of business, & therefore in the words of the HMRC public notice on the subject (VAT PN 701/30 section 13.3), 'if a contract allows for a separate charge of management services' the VAT liability of such services will in all likelihood fall outside the VAT exemption for vocational training, (VAT Act 1994 Schedule 9 Group 6) & any consideration for such services will be liable to VAT at the standard rate.

The VAT treatment on the prime/sub-contractor arrangements in my view will depend fundamentally on the wording of the contract. (Recent VAT case law indicates that the courts take great credence in the wording of contracts to establish the VAT liability treatment.) Therefore a review of all such contracts is the first crucial step in interpreting the VAT supply position.

Mike Payne of Grosvenor VAT Consultants has been advising providers on the most cost effective application of VAT for over 20 years, (formerly as a partner with national firm of accountants BDO, & the latter 15 years from his own firm). During that time he has acted for over 150 providers & successfully obtained in excess of £3 million of refunds, as well as the benefit of the ongoing best VAT treatment.

Mike is instructed by a number of providers to review & advise upon the wording of contracts, to ensure the most appropriate & legitimately beneficial VAT interpretation.

Thus he is well placed to advise on the VAT implications of the prime/sub-contractors contract wording & resultant VAT treatment."

2. 24 + ADULT LEARNER LOANS

You will be only too aware of the confusion of the VAT treatment on the SLC funding to the learners on these programmes. Added to by the recent article in FE WEEK. I propose the following wording to respond.

'VAT & the SLC LOANS CONFUSION EXPLAINED'.

The recent conflicting announcements & comments on the issue of Adult Learner Loans & their VAT liability, far from clarifying the situation has further muddied the waters.

I am pleased to advise as follows to assist providers in resolving the mysteries.

It is in my view necessary to look firstly at the current & ongoing application of VAT to the loans & secondly the historic & retrospective position.

* Firstly for the present, following extensive correspondence with HMRC, my firm has received unequivocal guidance & a firm decision, that HMRC consider that the SLC funding is definitely liable to VAT at the standard rate. Whilst I consider that this is debatable at best, in particular when

comparing this issue to the VAT exempt treatment of the Apprenticeship Levy, the only way to challenge & dispute this interpretation will be to take HMRC to a VAT tribunal, & beyond if necessary to appeal this decision.

(This position is confirmed in the HMRC Business Brief 2/18, which confirms the current & ongoing VAT liability.)

* Secondly, the historic VAT liability treatment is mired in confusion. This is due to conflicting decisions & guidance in correspondence & following VAT inspections by HMRC. This includes conflicting instruction to providers that their historic exempt treatment of SLC funding is correct, & also HMRC repaying VAT accounted for on SLC funding. Thereby resulting in the contradictory VAT application by providers supplying the same programmes.

The concept of fiscal neutrality, (which means that the same tax treatment to suppliers making the same type of supplies), should be invoked to argue that all providers must be treated the same & therefore all the relevant supplies prior to the publishing of the Business Brief 02/18 were exempt from VAT for all providers.

In order to pursue the refund of VAT paid on the SLC funding, I advise that each provider must make their own application & make the case as strongly as possible in their own prevailing circumstances. HMRC always insist that the application of VAT by VAT registered businesses must rely on the merits of each case. The wording & grounds to support such a submission for a repayment of VAT, is needless. To say of paramount importance. This action should be taken as soon as possible for refunds, due to the 4 year capping legislation to limit such claims.

Mike Payne of GROSVENOR VAT CONSULTANTS has been advising providers on the most cost effective application of VAT for over 20 years. (Formerly as a partner in the national accountancy firm BDO, & latterly for 15 years from his own firm). During this time Mike has acted for over 150 providers & successfully obtained refunds of more than £3 million, as well as the ongoing benefit of the best VAT treatment.

Mike is currently acting for a growing number of providers in both seeking refunds of VAT from HMRC for providers who have paid VAT on the relevant SLC funding & also making submissions to HMRC for clients who have treated the supplies as exempt, to retain that VAT liability treatment. The wording & grounds to argue for the desired VAT treatment is vitally important in ensuring the best chance of success. "

Mike Payne

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