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Dear Marc

VAT on Members' Allowances

You asked for my advice on whether it is lawful for HPC to set a policy for the payment of allowances to Council members which provides that the sums payable are fixed sums which are inclusive of any applicable Value Added Tax (VAT).

Although VAT is a tax on the consumer of goods and services, by virtue of section 1(2) of the Value Added Tax Act 1994 (VATA) the payment of VAT is the liability of the person who supplies the goods or services in question.

The legislation makes this distinction because, although VAT must be charged on taxable supplies of goods or services, in the normal course of business it is a matter for the parties to expressly or impliedly agree whether a price includes or excludes VAT. For example, retail goods and services are invariably sold at a price which includes VAT because the final consumer cannot reclaim VAT. By contrast, wholesale or trade suppliers tend to exclude VAT from their prices because their customers can usually reclaim the tax they have paid.

This is an important point because section 19(2) of VATA provides that, where the supply of goods or services is for a consideration in money, its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to that consideration. In other words, if the consideration paid for goods or services is £100, unless the parties have in some way agreed that the price is "£100 plus VAT", the person making the supply will only be able to charge £100 in total for those goods or services, will be entitled to retain £85.10 of it and will have to account to Customs and Excise for £14.89 in VAT.

On that basis it is clearly open to the Council to agree that Members' allowances are inclusive of any applicable VAT and, so far as the applicable tax legislation is concerned, it will be lawful for the Council to do so.

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An inevitable consequence of setting such a policy is that some Council members will receive the full amount of the allowance whilst others will only receive 85.1% of it. Therefore, a second question also needs to be addressed, of whether or not the Council may lawfully adopt a policy which may create such an inequity (beyond treating the employed and self-employed differently which is a consequence of the VAT legislation).

As a public body the Council has an obligation to act within its statutory powers, applying them for their proper purpose in a manner which is consistent with the common law principles applicable to public authorities and the Human Rights Act 1998.

So far as its statutory powers are concerned, Paragraph 16(2)(e) of Schedule 1 to the Health Professions Order 2001 provides the Council with the power to pay allowances and expenses to members but can it do so in a manner which may be inequitable?

The Council has a common law fiduciary duty which requires it to manage HPC's funds prudently and therefore a policy which sets a VAT-inclusive maximum expenditure for members' allowances would certainly be defensible in fiduciary terms, especially given that the Council is unable to reclaim VAT.

However, that fiduciary duty cannot override all other considerations and would not make it lawful for the Council to adopt a policy which, for example, set the allowances for registrant members at a different level to those for lay members or which set different rates for male and female Council members. Such a policy would clearly be unlawful as it would be discriminatory, involve the exercise of powers for an improper purpose and be contrary to the Human Rights Act 1998 (engaging the right to property and prohibition on discrimination protected by Article 1 of the First Protocol to, and Article 14 of, the European Convention respectively).

Given that the Council cannot lawfully set out to discriminate unfairly, before deciding whether to adopt a policy of paying VAT-inclusive members' allowances, the Council needs to consider whether such a policy, although not specifically designed to be discriminatory, would have the effect of being so, by either applying exclusively to one category of Council members or affecting that category disproportionately.

If the Council is satisfied on the latter point then this issue will be a matter of policy rather than law.

Yours sincerely

Jonathan Bracken
Partner

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HEALTH PROFESSIONS COUNCIL

Finance & Resources Committee

11th February 2005

9 - VAT ON ATTENDANCE ALLOWANCES

EXECUTIVE SUMMARY AND RECOMMENDATIONS

INTRODUCTION

The Committee authorised BDO Stoy Hayward to investigate whether there was any case for partners not to charge VAT on their assessors' fee charges to HPC. They have concluded that all those partners properly registered for VAT should pay over VAT on the income they receive from HPC.

Consequently they feel that there is no valid case to put forward to HM Customs and Excise.

This will now be communicated to all Partners and appropriate members of Council.

DECISION

The Committee is requested to note this document. No decision is required.

BACKGROUND INFORMATION

None

RESOURCE IMPLICATIONS

None

FINANCIAL IMPLICATIONS

None

BACKGROUND PAPERS

A copy of BDO Stoy Hayward's report can be made available as required

APPENDICES

None

CONDITIONS OF APPOINTMENT

HEALTH PROFESSIONS COUNCIL (HPC)

CONDITIONS OF APPOINTMENT

Statutory Basis of Appointment

The Privy Council will appoint the members and alternate members in accordance with Schedule 2 of the Health Professions Order 2001.

The alternate Council member is entitled to attend and vote at Council meetings only in the absence of the Registrant Council member concerned.

Remuneration will be a matter for the HPC. The Health Professions Order 2001 permits it to make such provision in respect of its member and members of its committees and sub-committees for the payment of fees and allowances, including the payment of allowances to employers of members to enable members to undertake their Council duties. It also provides for the reimbursement of reasonable expenses incurred in the course of Council duties.

Removal from Office:

A Registrant or Alternate Council member will be removed from office if, during the appointment period, for any reason he or she:

- ceases to registered in the part of the register he or she was appointed to represent. This will also apply to the President, if a Registrant;
- ceases to live or work wholly or mainly in the UK;
- has been appointed as a member to represent a specific country of the UK and ceases to live or work mainly in that country;
- ceases to be wholly or mainly engaged in the practice, teaching or management of the profession for which registered, or research, if applicable;
- while the subject of fitness to practise investigations or proceedings under the Health Professions Order 2001 or the Professions Supplementary to Medicine Act 1960; or
- an Order has been made against him by a Practice Committee.

Any member can be removed by a majority of at least two thirds of the other members of the Council because of a serious and persistent deficiency in attendance or unsatisfactory conduct or performance at meetings.

The Council may provide, in Standing Orders, for other circumstances leading to removal from membership.

Disqualifications

Anyone who within the past five years has been convicted in the UK , Channel Islands or Isle of Man and received a sentence of more than 3 months imprisonment, including suspended sentences without the option of a fine, would be disqualified from appointment. The Rehabilitation of Offenders Act 1974 applies and convictions become spent as follows:

- Imprisonment less than 6 months 7 years
- Fines 5 years
- (These periods halved if individual under 17 at time of sentence)
- Disqualification from driving Period of Disqualification
- Absolute discharge 6 months
- Suspended sentences are treated as if they had been put into effect.
- Prison sentences of longer than 30 months can never become spent.

Members may resign at any time, in writing addressed to the Registrar, copied to the *Department of Health for information.

Members will be required to declare any relevant interests in the Register of Interests which the HPC will be required to keep.

In the event of any conflict of interest, a member will be asked to make a declaration in the Register of interests and also notify the *Department of Health detailing:

- The conflict of interest;
- Whether it relates to the member, spouse or partner;
- Whether pecuniary interest is involved;
- Whether the member, spouse or partner is willing to forgo any pecuniary interest for the period of the appointment.

Reappointments

After the second transitional period which will end on 8 July 2005, Registrant and Alternate members will be elected by the professions and the President will be elected by Council members from amongst themselves. Lay members will be eligible for re-appointment, subject to satisfactory performance, but there is no automatic right to re-appointment. The Office of the Commissioner for Public Appointments recommends a maximum service of ten years with the same organisation in the same role. The Health Professions Order 2001 specifies that no-one may serve more than three consecutive terms.

Contact Details. For further advice about these conditions of appointment or to notify resignation or conflict of interest, members should contact:

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