

VAT ON ATTENDANCE ALLOWANCES

EXECUTIVE SUMMARY AND RECOMMENDATIONS

INTRODUCTION

Council requested at its October meeting that a paper on VAT on Attendance Allowances be put to the next meeting of the Finance & Resources Committee.

The underlying point here is that committee members who are self-employed and are VAT-registered feel disadvantaged in comparison with those who are not.

The executive believes that the personal tax status of individual Council members is not its concern. Two employees earning the same gross may get different net pays because of different tax circumstances and tax codes. (To quote a “popular” example, two people may be on the same holiday but have paid different amounts depending on when they bought the holiday or by what method or through which tour operator.)

We budget to pay, and indeed do pay, a maximum sum for allowances. We do not allow VAT-registered Council or Committee Members or Partners to charge VAT on top of that. That is because we are not VAT-registered and cannot be under the Order in Council (Schedule 4 (Article 48) Paragraph 6:

The Value Added Tax Act 1994 (c.23)

In Part II of Schedule 9 to the Value Added Tax Act 1994 (exempt supplies of goods and services), in item 1© in group 7 (health and welfare), for “any register kept under the Professions Supplementary to Medicine Act 1960” there shall be substituted “the Health Professions Order 2001”.

Currently our advisors are considering whether our Council and Committee members and partners should have to account for VAT on the allowance they receive from us. There is a **small chance** that they might not have to because of our links with education. Originally we were told that HM Customs and Excise would not rule on this on an enquiry from us and that it was up to individuals to make their own representations. However we have now prevailed on BDO Stoy Hayward to draft a letter on our behalf. A consultant is attending the office in December to talk through the work done by individual categories. We would then write the letter and hope to receive a ruling in due course. (This unfortunately is a slow process.)

DECISION

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

BACKGROUND INFORMATION

None

RESOURCE IMPLICATIONS

None

FINANCIAL IMPLICATIONS

Fees payable to BDO Stoy Hayward for their advisory work.

BACKGROUND PAPERS

See attached:

1. Letter to a partner.
2. Explanatory paper made available to partners at their conference in Manchester in September

APPENDICES

None

LETTER TO A PARTNER

VAT on Assessor Fees

Thank you for your letter. The VAT department of our auditors, BDO Stoy Hayward, has considered the points you raise and much of this letter has been drafted by them. In summary there is nothing we can do to alleviate the question of the inequality of fees between individual assessors dependant on their VAT status. However there is some GOOD NEWS in that our auditors consider that there is a case for arguing that you should NOT pay over VAT for the work you do on our behalf. This will require you to take this up with your own VAT Inspector for a definite ruling. However, if you are successful, you will have benefited all HPC assessors.

I accept that our policy of treating the daily fee as VAT inclusive works to the detriment of VAT registered assessors. However, because the HPC is not registered or liable to be registered for VAT and is not entitled to reclaim any VAT from HM Customs, the treatment of the fee as VAT exclusive would result in an additional cost, which we could not afford under budget restraints.

I note what you say about reducing the fee so that all assessors, both VAT-registered and unregistered, receive the same tax exclusive fee. I must however tell you that we do not consider a fee reduction to be a feasible option.

I have taken advice about the possibility of getting some form of exemption from Customs and Excise. Our auditors' advice is that the HPC is not entitled to refunds under s.33, VAT Act 1994 (refunds to specified public bodies) or under s. 41 (refunds to Government departments). Customs have no discretion to offer any relief not provided for in current legislation.

Our auditors suggest however that you might yourself consider asking Customs for a binding ruling on whether or not your services to HPC could be exempted under Item 3, Group 6, VAT Act 1994 ('The provision of examination services...to an eligible body').

Arguably, HPC is an eligible body in the sense that it is a body corporate established by Statutory Instrument to regulate a number of health professions. As you know, it sets the standards of education, training, conduct and performance expected of registrants and prospective registrants.

The exemption for 'examination services' is intended to apply to a far broader area of services than examinations alone (Customs and Excise Manuals, Volume VI VAT-Part 7, Chapter 2, Section 6.3). They comprise the activities of experts in the education/training fields which are directly concerned with devising, applying, evaluating or monitoring methods of examination, assessment, validation, accreditation, certification or registration.

There is nothing which seems to exclude legal services by those who specialise in this area and who are directly involved in the accreditation or registration process. However, I accept that this is a complex matter and that exemption is not a foregone conclusion. May I suggest that you have a go and we will then review the whole question in the light of the response you get? Please ask if you need further assistance as to how to proceed. If you wish I can draft a letter from you to your local inspector, if you provide me with the details.

Yours sincerely

PAUL K H BAKER FCA FCMI
Finance Director

HEALTH PROFESSIONS COUNCIL

TAXATION OF FEES/ALLOWANCES RECEIVED BY PARTNERS/COUNCIL MEMBERS

August 2004

VAT REGISTRATION AMOUNT

Anyone supplying VATable supplies in excess of £58,000 per annum must register for VAT. With some exceptions this broadly means that earning fees, as opposed to salary from an employer, in excess of £58,000 in one year will bring Partners and Council Members into charge for VAT.

RESPONSIBILITY FOR VAT AND INCOME TAX

Where attendance allowances are paid to Partners or Council Members, who are self-employed, it is the responsibility of the recipient to account for VAT on the fee to HM Customs and Excise, if they are registered.

The HPC has discussed the question of VAT with their advisors, BDO Stoy Hayward, and some consideration was given to whether supplies to the HPC might be VAT exempt. As attendance allowances are covered by contracts with the HPC in respect of attendance or services provided, they all fall within the scope of VAT.

The tax deductible from fees would appear to be as follows. All fees payable to self-employed persons are subject to tax at the standard rate, or where applicable, at the higher rate. If a fee has already had VAT deducted from it, only the net fee should be disclosed on a tax return.

The following are illustrations:

WHERE VAT IS NOT DEDUCTED:

| | £ | £ | £ | £ |
|---------------|--------------|---------------|---------------|---------------|
| Fee/allowance | 65.00 | 130.00 | 230.00 | 530.00 |
| Tax at 22% | (14.30) | (28.60) | (50.60) | (116.60) |
| | <u>50.70</u> | <u>101.40</u> | <u>179.40</u> | <u>413.40</u> |

WHERE VAT IS DEDUCTED

| | £ | £ | £ | £ |
|----------------------|---------------|----------------|----------------|----------------|
| Fee/allowance | 65.00 | 130.00 | 230.00 | 530.00 |
| VAT included at 17½% | <u>(9.68)</u> | <u>(19.36)</u> | <u>(34.26)</u> | <u>(78.94)</u> |
| Net | 55.32 | 110.64 | 195.74 | 451.06 |
| Tax at 22% | (12.17) | (24.34) | (43.06) | (99.23) |
| | <u>43.15</u> | <u>86.30</u> | <u>152.68</u> | <u>351.83</u> |

Whilst it is accepted that different partners and council members have different circumstances, the HPC is not registered for VAT and, under its legislation, cannot be registered. It can only budget for paying one sum for each category of allowance or fee. People's circumstances change but their circumstances are personal to them, not the HPC. A simple comparison: 2 employees could be paid £25,000 a year but their net pay might be very different because of their personal circumstances: it is all the same to the employer.

Consequently all persons who are self-employed must

- 1 Consider whether they should be registered for VAT and pay the VAT to HM Customs and Excise, if appropriate. They should then disclose the net amount on their tax return and pay income tax as appropriate.
- 2 If not registered for VAT, declare the gross amount on their tax return and pay income tax as appropriate.

PAUL BAKER
Finance Director
September 2004