



VAT and pension schemes: HMRC reconsiders

Importance: ★★★☆

HMRC has announced it is looking again at the VAT treatment of services to DB and DC pension schemes, including investment management. This is welcome news for employers and trustees.

HMRC will issue new guidance in the autumn covering both types of scheme.

We recommend employers and trustees consider making protective claims now for any overpaid VAT to prevent currently eligible claims becoming time barred.

HMRC sets out its new position in Brief 22/14: <http://www.hmrc.gov.uk/briefs/vat/brief2214.htm>.

The European Court's (CJEU) decisions in the *PPG* case and the *ATP* case brought the VAT issue to life. Both decisions ask questions of the stance HMRC has taken in the past.

DB schemes

The main issue with DB schemes is VAT on investment management services. The *PPG* case suggested this might be recoverable.

In the past, HMRC has accepted that, with appropriate billing arrangements, the employer could recover VAT on the administration element of an investment management service. For simplicity it allowed an assumption that 30% of the cost was for administration. But it denied recovery in relation to the investment management element (70%).

Pending the new guidance, employers and trustees can carry on with the approach they have used in the past, including the 30/70 split. See HMRC's original bulletin (Brief 06/14) for these transitional arrangements which now continue until the autumn: <http://www.hmrc.gov.uk/briefs/vat/brief0614.htm>

For the long term, this Brief outlined tighter conditions for VAT recovery than in the past. This interpretation of the *PPG* case prompted extensive comment from the pensions industry, contributing to the current reconsideration.

For more detail about the original proposal for the future, see the box below.

DC schemes

In the *ATP* case the CJEU held that certain administrative services (including some linked to investment) in relation to DC schemes can qualify for exemption from VAT. This could mean employers and trustees have paid VAT that was not due. So far, HMRC has not published any response to this case. The question the industry wants an answer to is: what categories of service will HMRC recognise as falling within the exemptions found to apply in the *ATP* case? The autumn guidance needs to cover this.

DC schemes may also be able to rely on the *PPG* case.

Reclaiming VAT

Uncertainty about the future means now is the time for employers and trustees who have incurred a VAT expense in respect of the administration and/or investment management of a DB or DC occupational pension scheme to consider making a claim to HMRC for the tax incurred.

However, note that Brief 06/14 (under Claims and Retrospective Action) cautions that where 30/70 has been applied, a claim would mean recalculating the amounts of tax proper to employer and trustees. Depending on the facts of any particular case, that could mean the employer or trustees owe extra tax. A cost/benefit analysis needs to be done before any claim is made.

According to whether a scheme is DB or DC and to the service in question, a claim may relate to input tax or output tax.

Pending the autumn guidance, we recommend consideration is given to making protective claims now to prevent currently eligible claims becoming time barred. A claim should include the following:

- name and contact details of the employer and the trustees,
- name and type of scheme,
- the employer's VAT registration number (and/or any VAT registration number of the trustees),

- the nature of the expenses to which the reclaim relates,
- the period of time over which the claim is made,
- any readily available details of the expenses in question, including an estimate of the amount where possible,
- a statement that full particulars will follow and the amount may be amended as the full details of the claim are specified and
- a claim to compound interest.

Where a claim is for output tax wrongly paid (in relation to a DC scheme, say), it is likely to be best to try to have the supplier join in the claim.

VAT legislation says claims may only be made in respect of the previous four years but, in some circumstances, it is possible to extend this. Initially claims should therefore be made in respect of all prior periods.

As the above indicates, thought needs to be given before a claim is made. Burges Salmon's team of tax specialists would be pleased to help.

PPG case: HMRC's initial position

In Brief 06/14, HMRC's reading of the *PPG* case was that an employer would be able to recover VAT on investment management services to its DB scheme only if:

- they included an administration element as well as investment and
- they were supplied to the employer. Indicators for this would include whether the contract for the supply was with the employer and whether the employer paid for it.

Further, HMRC insisted the cost must remain with the employer. If the cost was passed on to the scheme (e.g. by reimbursement or deduction from contributions), the employer would be liable for VAT on *that* transaction. It appears the same might apply where the cost of other scheme-related services supplied to the employer was passed on.

This position is now being reconsidered.

More information

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