Item 6

Policy paper

Revenue and Customs Brief 2 (2017): VAT - care homes and hospitals

Published 28 July 2017

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1. Purpose of this brief

This brief sets out HM Revenue and Customs (HMRC) revised policy on the VAT zero rate for new buildings intended for use solely for a relevant residential purpose as care homes. It explains the distinction between buildings used as care homes (and similar facilities) which are eligible for zero rating and hospitals which are not.

2. Who should read this brief

All parties involved in the construction and supply of buildings that are designed as care homes and hospitals.

3. Background

The construction and first grant of an interest in a building, intended for use solely for a relevant residential purpose as a care home, is zero rated. A care home is one that provides residential accommodation with personal care to people in need of such care. Care may be needed because of:

- old age
- disability

- past or present dependence on alcohol or drugs
- past or present mental disorder

The construction of a hospital is standard rated. However, just because an institution is badged as a 'hospital' doesn't necessarily exclude it from being treated as a care home. If the intended purpose of the building is to provide accommodation for the care detailed above, its construction may be zero rated.

There are 2 key areas of difference between care homes and hospitals:

Hospitals	**Care homes**
Aim to treat patients quickly then discharge them to make space for other patients needing treatment.	Allow lengthy periods of residence for individuals suffering from conditions that need longer term care.
Deal with injuries, illnesses and conditions that need medicinal or clinical intervention and rely on staff with the appropriate qualifications to carry out these functions.	Provide personal care that tends to be for the purpose of enabling a person to look after themselves.

There have been a number of cases involving the status of care homes and whether they qualify for zero rating. In the latest of these, Pennine Care NHS Trust (TC04998), the First-tier Tribunal held that 'personal care' is a term that must reflect current times; it may go beyond the basics of feeding and washing and in our view, in the context of mental health illness, the inclusion of the type of bespoke and specialist care provided by the Unit doesn't trespass into the arena of a 'hospital or similar institution'.

4. The change in HMRC policy

Following the decision in Pennine, HMRC has reviewed its policy with regard to the VAT treatment of the construction or first grant of new care homes. It accepts that personal care may go beyond a supportive and supervisory role to assist with living. The term may include both therapeutic and clinical treatment that can alleviate or improve the condition of the individual. When determining whether an institution is a care home or a hospital, HMRC will now consider whether there is provision for a person to be in residence for a lengthy period.

Personal care may incorporate a high level of medical treatment if it's essential to the accommodation that's being provided. Care homes, as distinct from hospitals, may be set up to offer an extended period of in-house treatment or to offer treatment that assists recovery or rehabilitation.

A care home may have a treatment centre that occupies a building, or a distinct part of a building. The treatment centre will be subject to zero rating if it's to be used solely for the residents of the care home - used 95% or more by those residents. If it's used more than 5% by non-residents of the care home, the zero rate won't apply to its construction or first grant of a major interest (freehold or long lease over 21 years or 20 years in Scotland).

The decision in Pennine was in the specific context of care provided for persons detained under the Medical Health Act 1983. HMRC accepts that the approach adopted by the First-tier Tribunal will apply to other institutions (such as hospices) which allow for a longer period of convalescence or rehabilitation than would commonly be the case in a hospital.

5. Claims for overpaid VAT

If you have previously incurred VAT on supplies that you believe would have been eligible for zero rating under the revised policy, you may be able to recover the overpaid VAT where you have:

- been supplied services of construction
- received first grants in buildings used solely as care homes
- received first grants of conversions into buildings used solely as care homes

You will need to recover the VAT from your supplier who may be able to make an adjustment to his VAT account and repay to you the amount that was overcharged. In order for you to be entitled to the repayment of VAT the supplies, to which it relates, must not have occurred more than 4 years previously. You will need to produce a certificate to enable your supplier to repay the VAT that has been overcharged - see Section 17 of VAT Notice 708: buildings and construction. Paragraph 17.6 of this notice allows a customer, who has received services from a supplier to issue a late or belated certificate provided that:

- at the time the supply was made the customer could demonstrate that they had an intention that the building would be used in the way being certified
- all other conditions for zero rating have been met

Those who believe that they've accounted for VAT on supplies on which none was due are entitled to bring claims under section 80 of the VAT Act. HMRC has the power to refuse claims and make payment conditional on the reimbursement of the claimant's customers where they can show that the claimant passed the economic burden of the tax charge on to his customers (meaning that he would be unjustly enriched by payment of his claim).

Policy paper

Revenue and Customs Brief 3 (2017): VAT - treatment of pension fund management services

Published 5 October 2017

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Purpose of this brief

This brief announces a change in HM Revenue and Customs (HMRC) policy about the VAT treatment of pension fund management services provided by regulated insurance companies.

Readership

This Revenue and Customs brief is primarily aimed at:

- pension fund managers and administrators
- insurers and other pension providers
- pension scheme trustees
- tax advisers

Background

HMRC policy has allowed all pension fund management services provided by regulated insurance companies to be exempt from VAT. This treatment arises from the UK's original application of the insurance exemption to all of an insurer's regulated insurance activities, including the management of pension funds.

Following the Court of Justice of the European Union (CJEU) judgement in Card Protection Plan (CPP), UK law was amended from 1 January 2005 to remove any link between an insurer's regulatory status and the entitlement to VAT exemption on its supplies. The judgement in CPP makes it clear that the EU insurance exemption applies only to the underwriting of risk and doesn't apply to other supplies made by insurers.

However, UK policy continued to allow insurers to exempt their supplies of pension fund management services. The initial retention of this policy followed from an earlier HMRC consultation entitled 'Consultation on the VAT Treatment of Pension Fund Management' which was published in November 2002. The responses to this consultation were inconclusive, and, as a result, the then government announced that it wouldn't make any immediate changes to the VAT treatment of fund management services, but would keep the issue under review.

Since then, this treatment has been reviewed regularly and maintained, reflecting the ongoing uncertainty concerning the current and future treatment of pension fund management services. Initially this uncertainty arose from the EU Commission's review of the VAT treatment of financial services which began in 2006, and which created an expectation that it would result in a future exemption for all pension fund management services. However, after several years of discussion, the EU Commission withdrew its proposal in its 2016 Work Programme, as no agreement appeared likely. Continuing CJEU litigation in this area has created further uncertainty.

The CJEU judgement in ATP Pension Services

In ATP Pension Services (C-464/12) (ATP), the CJEU found that a pension fund which pooled investments from a number of defined contribution occupational pension schemes qualified as a special investment fund (SIF) for the purposes of the VAT exemption for fund management services.

This case specifically concerned defined contribution (otherwise known as money purchase) pensions and didn't concern the VAT treatment of services supplied in connection with defined benefit pensions. Services supplied in connection with defined benefit pensions schemes were found by the CJEU in Wheels Common Investment Fund Trustees and Others (C-424/11) to fall outside the fund management exemption on the basis that the investment fund (which pools the assets of such a scheme) wasn't a SIF.

Prior to the judgement in ATP, HMRC didn't consider pension funds of any kind to be SIFs, and therefore treated services provided in connection with all types of pension fund as falling outside the specific VAT exemption for the management of SIFs. In light of the ATP judgement, HMRC now accepts that pension funds that have all of the required characteristics are SIFs for the purposes of the fund management exemption, so that the services of managing and administering those funds are, and always have been, exempt from VAT. Pension funds that don't have all those characteristics aren't SIFs and so aren't within the scope of the exemption.

You can find more information on the application of the exemption for the management of SIFs in the HMRC VAT Finance Manual.

Changes to UK policy

The relevant court cases on this issue have now concluded, and it is now clear that there will be no further review of the EU rules in this area before the UK exits the EU. In light of this, it is appropriate that HMRC now updates its policy to reflect the settled case law. Consequently, the policy of allowing insurers to treat their supplies of non-SIF pension fund management services as VAT exempt insurance is to be discontinued. This policy change will apply from 1 January 2018.

HMRC understands, however, that the great majority of pension fund management services provided by insurers are supplied for defined contribution pension funds and therefore qualify (and have always qualified) for exemption as SIFs following the judgement in ATP.