

VAT on Pension Scheme costs

On 25 November 2014 HMRC published Revenue and Customs Brief 43 (2014): VAT on pension fund management costs.

The Purpose of this brief was to set out the position of HM Revenue and Customs (HMRC) following the decision of the Court of Justice of the European Union. The brief outlined a change to what was previously allowed for VAT deduction.

For more information on this matter please click following [link](#).

Since then there has been concerns amongst pension lawyers whether tripartite contracts between the provider and both the scheme and the employer are allowable under pension law and the tax allow ability of these costs in the employer accounts. The transitional period was extended to 31 December 2016 and earlier this month it was announced that this would be extended to 31 December 2017.

HMRC have said it has taken longer than expected to reconcile the court decision with pension and financial service regulations, accounting rules and emerging case law.

This means that taxpayers may continue to use the VAT treatment outlined in VAT Notice 700/17: Funded Pension Schemes until 31 December 2017.

The policy paper - Revenue and Customs Brief 17 (2015): deduction of VAT on pension fund management costs was updated on 14 September 2016.

HMRC acknowledged that concerns had been raised on the implications a tripartite agreement could have on an employers CT deduction and confirmed that their view was that where an employer pays directly for asset management costs under a tripartite contract that the employer is not entitled to a Corporation Tax deduction.

HMRC stated that a pension scheme trustee could contract with an employer to supply them with the service of running the pension scheme on the employer's behalf. Where the supply to an employer is a taxable supply, then the VAT charged by a trustee to an employer will be deductible by the employer to the extent that it relates to the taxable supplies of the employer. Any VAT a trustee incurs on administration and other general pension scheme related services (including legal, audit or actuarial services) used by it in order to make the onward taxable supply to the employer will be deductible by it in full.

However, where a trustee incurs VAT on asset management services this will have a direct and immediate link to the trustee's ongoing investment activities. This VAT may also have a direct and immediate link to the supplies made by a trustee to the employer, provided part of the trustee's supply to the employer of running the pension scheme on their behalf includes asset

management services and the services on which the trustee incurs VAT are used for that purpose. If asset management services are put to dual use any deduction by a trustee in respect of the VAT incurred by it on these services will need to reflect this.

HMRC stated that a corporate trustee of a pension scheme can, as the legal representative of that pension scheme, VAT group with an employer provided they meet the eligibility criteria. In those circumstances, any supplies made by a trustee acting in that capacity including dealing in the assets of a scheme's fund(s), are treated as being made by the representative member of the VAT group.

HMRC acknowledged that representatives have raised concerns that the effect of the joint and several liability provisions relating to VAT grouping mean that where a corporate trustee is VAT grouped, HM Revenue and Customs would be entitled to recover a VAT debt of the VAT group from the pension scheme assets.

HMRC confirmed that their position is, and remains, that we are unable to recover VAT from the scheme assets except to the extent that the relevant VAT debt is attributable to the administration and operations of the pension scheme.

HMRC confirmed that other options were still very much an ongoing issue and stated that they are still considering representations which have been made more recently, in particular in relation to asset management services and whether there are alternative tripartite structures that would enable a Corporation Tax deduction. It was advised that further guidance will be published later this year.

What to do now?

Provided that the employer and pension scheme agrees the same treatment, the VAT treatment outlined in [VAT Notice 700/17: Funded Pension Schemes](#) can continue to be used.

Taxpayers may switch to the new arrangements at any time during this period. Clearly there are wider implications to consider if Trustees do this and professional advice must be sought.

It is frustrating that it has taken so long for this matter to be resolved, for those that have incurred costs on this issue and also the investment of time from professionals in the industry. There is a real fear now that, especially in light of BREXIT that this could be delayed further.

We will provide updates as and when these are available. If you would like further information please contact a member of the [Pension Schemes team](#).