

Proposed section 33E VATA 1994 deferred

In the 2014 Autumn Statement a new proposed addition to s33 was announced, which was to be a VAT refund scheme for non-departmental public bodies (NDPBs) and certain other similar public bodies. This scheme would refund non-business related VAT incurred by these bodies, but in order to participate, these bodies would have to agree to repay the public funding that would previously have covered that VAT cost. HMRC, therefore, anticipated that the scheme would be revenue neutral. The proposals aroused quite a lot of favourable comment from outsourcers who had felt VAT was a barrier to them being able to compete fairly with in house teams when tendering for contracts with NDPBs, but there seemed to be a lack of clarity about exactly how the scheme would work, and who would qualify.

The 2015 Finance Act contained other changes to s33, for palliative care and medical courier charities amongst others, but there was no sign of the refund scheme for public bodies. At the Budget, the Overview of Tax Legislation and Rates document listed VAT – refunds to certain bodies as a measure as ‘unchanged from Autumn Statement, which will be legislated in a future Finance Bill’ (see page 20).

HMRC have subsequently confirmed that: 1) This scheme had been deferred to a later Finance Bill, but not dropped. 2) Contrary to the information released in 2014, goods would not qualify for refund. It appears, therefore, that it will differ from the rest of s33, which does cover goods for non-business use, and be more like the s41 refunds for Government bodies, which cover certain contracted out services for non-business use.

It is important to remember that this will be a refund scheme rather than a liability change, (so the VAT will have to be claimed from HMRC, claims will be audited and there will be time limits), that it will have limited application, and that it will make no difference to the VAT costs of exempt activities since these are businesses and not covered by the scheme.

We do not know how the public funding claw-back will work. If the scheme is designed, like s41, to create a level playing field, as far as VAT is concerned, between in house and outsourced services then there is often little publicly funded VAT relating to in house services, where the main cost is usually VAT free wages. However, there could be some publicly funded taxable costs that are used to support the activities of the in-house department whose activities are to be outsourced. But those costs might support other in house departments as well. So the amount of any claw-back could be complicated to work out and this will be new territory for the finance staff of the body.

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Eligibility for the scheme is at this stage unclear.

Comment

Any entity that thinks it may be eligible, may wish to start thinking about the practicalities of this scheme and whether it would be financially beneficial to sign up for it, so as to be ready when it is implemented, from a date as yet unknown. We will of course update clients of any developments.

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