For many years, there was a well established protocol under the staff hire concession which was widely used by charities to limit VAT to the commission. However, this was withdrawn by HMRC some years ago reigniting the debate.

**Temporary staff**

The argument around the VAT treatment of temporary staff is a long and complex one. At its heart is the question of if VAT is due on the full cost of a temporary worker or simply the ‘commission’ payable to the agency that arranges the placement.
The Reed Case
The earlier Reed Tribunal case on temporary staff hire was complicated as it involved the validity of two separate claims. However, the VAT treatment aspect of the case was relatively straightforward which focused on whether the consideration for a supply of temporary staff was the total fee paid to the agency (as argued by HMRC) or whether it was the total fee less the amount paid as salary (as argued by the agency). The Tribunal found in favour of the employment agency and VAT was therefore only payable on the mark up.

Following the ruling, HMRC issued guidance which says the following:

• Reed is a First Tier Tribunal (FTT) decision and therefore not a binding precedent
• There is another FTT case which supports HMRC’s view but is also not a binding precedent
• HMRC say that this guidance does not need to be amended because of the Reed decision
• Their guidance does allow for an agency structure with VAT due only on the margin
• However, HMRC say VAT is due on the full charge if the person arranging the temporary work placement, or anyone connected to the person arranging the placement, pays the workers

The Adecco Case
Due to the dichotomy between the Reed decision and HMRC’s views, it was hoped that another case would help clarify matters. This case also FTT was that of Adecco, with a whole retinue of others standing behind it. A 50 page decision did not follow Reed and decided that VAT was payable on the whole agency fee, which was a surprise. We believe that Adecco has sought leave to appeal to The Upper Tribunal. Until any appeal is heard and decided, it would seem that the VAT treatment of temporary workers is at best uncertain, although HMRC no doubt regard their business guidance issued after Reed as being appropriate.

Cost sharing
From July 2012, following instructions from the EU, the UK introduced an exemption for cost sharing. The legislation that allows cost sharing, requires a separate entity to be formed that incurs the costs, (termed the cost sharing group “CSG”) which is to be owned by those entities that wish to share costs. In addition, all these members of the CSG must have exempt or non-business activities. The CSG then recovers the exact costs with no mark up from the relevant other entities which does not involve a VAT charge.

It has proved rather unpopular, which may be down to the fact that the UK was forced to introduce it and have made the rules more restrictive than they might have been. One disincentive is the need to have a new CSG company and in the case of employees would mean transferring all the employees from the existing employing company to the CSG, which is fairly unattractive.

HMRC are now consulting on the VAT grouping regulations and legislation; it seems that there may well be a relaxing of one or more of the current conditions because HMRC are taking cognisance of European cases and considering that grouping should be available to a wider range of business structures. One of those, the requirement for VAT group members to be corporate bodies, may be relaxed or removed which may lead to the use of VAT grouping in the charity sector possibly making the cost sharing exemption fairly redundant.

So what do I need to do now?
It is simply a case of watch this space, both for the Adecco appeal when it takes place and for changes to the VAT grouping rules. In the meantime, it is quite possible to facilitate the sharing of staff or other costs without any unwanted VAT costs but the structure needs to be carefully set up as there have been many cases where HMRC have succeeded because the set up fails in a particularly crucial respect. Taking professional advice is therefore very important.
What VAT topics would you like to hear about?

Our leading VAT specialists have helped a wide range of organisations of all sizes address VAT concerns, save VAT and avoid pitfalls.

Our VAT series will cover a variety of ‘need to know’ VAT topics. However, we are also happy to hear directly from you about what you want to know about VAT, to ensure you get the most out of the series.

Please send any topic requests to damoo@ks.co.uk

Your VAT team
Adrian Houstoun
Partner
ahoustoun@ks.co.uk
020 7566 3802

Geraint Lewis
VAT Principal
glewis@ks.co.uk
020 7566 3830

Your charities contact
Nick Brooks
Head of Charities
nbrooks@ks.co.uk
020 7566 4000

Contact us

City
Devonshire House
60 Goswell Road
London
EC1M 7AD
T 020 7566 4000

Heathrow
Middlesex House
800 Uxbridge Road
Hayes, Middlesex
UB4 0RS
T 020 8848 5500

St Albans
105 St Peter’s Street
St Albans, Herts
AL1 3EJ
T 01727 896000

Romford
Orbital House
20 Eastern Road
Romford, Essex
RM1 3PJ
T 01708 759759

Redhill
Surrey House
36-44 High Street
Redhill, Surrey
RH1 1RH
T 01737 779000

West End
141 Wardour Street
London
W1F 0UT
T 020 7304 4646

www.kingstonsmith.co.uk/charities
www.kingstonsmith.co.uk/vat