

# KS NFP sector VAT update

## VAT on temporary staff



### Summary

Following a VAT case, not for profit organisations may be able to liaise with agencies that supply them with temporary staff to reduce the VAT cost and possibly obtain a VAT refund in respect of past supplies.

### VAT on temporary staff

Many charities, and other partially exempt businesses will be cheered by the First-Tier Tribunal's (FTT) decision in Reed Employment, where it was held that Reed was making a supply of introductory services rather than supplying temporary staff. The consequence of the decision is that VAT should have only been accounted for by Reed on the mark up charged to its clients, rather than the entire fee.

The Reed case involved supplies of staff prior to 1 April 2009 since when it has been HMRC's policy that both the commission element and the wages and NIC elements should be treated as consideration for the supply of temporary staff. However, the Reed case has now cast doubt over that policy.

The FTT reviewed the contracts and advertising literature of Reed, and looked into the economic reality of the business model rather than the contractual relationship.

- Under the economic reality the client would receive an introduction to temps who would then have a relationship directly with the client. The result was that VAT was due only on the introductory fee and the salary cost was not part of the supply and not subject to VAT. The other consequence was that the client would take on employment law obligations.
- Under the contractual relationship the agency would provide a supply of staff to the client. The result was that the agency would retain the employment obligation but VAT was due on the full consideration for the supply.

In Reed the FTT relied more on the economic reality than the contractual relationship and decided that the amount of VAT due, on supplies that were all before April 2009, was only on the margin charged by the agency. Although Reed won the VAT point, it failed initially to secure any refunds of VAT from HMRC because it was held that it would be "unjustly enriched." Unjust enrichment is a concept that denies substantial VAT refunds if the refund merely boosts the profits of the recipient. However, if the agency agree to repay the VAT to the charity or their other clients they should be able to defeat the unjust enrichment aspect.

### What to do

Where agencies supply staff to charities and other exempt or partially exempt businesses, they can consider making a claim for a refund covering the previous four years, to the extent that VAT has been charged on the full value for the whole of that period. It remains to be seen whether HMRC will meet the claim in full or seek to deny that part of the claim that arises after 1 April 2009. If HMRC do meet the claim in full it necessarily follows that the agency will in the future have to charge VAT only on the margin, where temporary workers are hired along the lines of Reed.

If you have been supplied with temporary staff from agencies such as Reed, you should consider approaching the agency and ask them to re-assess the VAT liability on their supplies to you over the last four years and obtain a refund where appropriate.

If you would like to discuss your specific situation please contact Adrian Houstoun or Nick Dawe or your usual contact.

### Note

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