

Further details on the LSC's position on the recent VAT change

How it will affect each type of work

Updated 27 January 2009

On Friday 28 November, we published our position on the changes to VAT and advised that we are working through our processes and systems to make the VAT changes.

We are now able to advise how we are changing our systems and processes to accommodate the VAT change, and how we will ordinarily credit or pay VAT. We have consulted HMRC on this guidance.

Below we explain our approach, however there are complexities to VAT and different permissible ways to account for VAT. The LSC cannot provide VAT advice, as you are responsible for your own VAT accounting. We recommend that you discuss any issues with your local VAT office.

General principle

Our general approach, as previously advised, is as follows:

- All cases reported as concluded before 1 December 2008 will attract a VAT rate of 17.5%, and;
- All cases reported as concluding on or after 1 December 2008 will attract a VAT rate of 15%.

This is the broad approach for all claims and all areas of LSC funded work, however for some areas of work the case concluded date is not reported or if it is, it is not captured by our systems and so it cannot be used. When this is the case a proxy will be used.

Below we set out how we expect the majority of providers to regard VAT for different case types. There may be circumstances where you need to account for VAT differently (e.g. by agreement with HMRC). In most circumstances, you will do this by amending the reported case concluded date (as listed on the table below). As this will not reflect the true position on the file, you should include an explanatory note. If you do not do this, you may not be paid at the VAT rate you expect.

There are also some areas where further explanation is required. These are covered below, specifically:

- The application of 'The 14 day rule' (or any further extensions)
- The application of case concluded or a proxy for each type of Crime or Civil work
- Costing Licensed and Certificated Work
- VAT on Disbursements
- Tailored Fixed Fees

The 14 Day Rule (and extensions to the 14 Day Rule) – How to report case concluded date

There are particular circumstances where a provider must charge VAT at 15% for a case concluded before 1 December (i.e. where a VAT invoice is issued within a specified timescale). This may be familiar as the '14 Day Rule' although HMRC may agree to a further extension.

Our systems are unable to accommodate these circumstances and so we ask that where you need to apply the 15% rate for a case concluded before 1 December, you must report the case concluded date as 1 December to ensure that the correct VAT rate is applied.

As the case concluded date reported will not reflect the true case concluded date you should make a note on the file to explain the action you have taken, what the actual case concluded date is and that it has been changed for VAT reasons.

For more information about the 14 day rule and extensions to the 14 day rule see HMRC guidance.

How we will apply the rule for each type of work or claim

Crime

Area of work	How to claim	Date we use to determine VAT rate	How will it work?
Police Station and Magistrates Court Standard Fees	LSC Online (CDS6)	Reported case concluded date	When you report these cases on your CDS6 you indicate whether you want VAT to be applied and what the VAT amount is for any disbursements – per case. Where you report the case concluded date as on or after 1 December, indicating “yes” will result in VAT being applied at 15% to that case. The Disbursement rules are provided below.
Magistrates Court – Non- Standard Fee	CDS7	Reported case concluded date	The case concluded date you report on the CDS7 will determine which level of VAT is applied. You record costs net of VAT on page 5 of the CDS7 and you add VAT when summarising the claim on page 1. Where you report the case concluded date as on or after 1 December, we will calculate VAT at 15%, where you report the case concluded date as before 1 December VAT, we will calculate VAT at 17.5%. If the case concluded date you report is different from the actual case concluded date (see section on 14 day rule above), you must explain this in an accompanying note.

Area of work	How to claim	Date we use to determine VAT rate	How will it work?
Magistrates Court - Assigned Council	CDS8	Reported case concluded date as per CDS7	<p>Assigned Counsel's fee note must accompany the CDS7 for that case. Costs are recorded on the CDS8 (and the CDS7) for assigned counsel's costs without VAT, and the VAT amount is also claimed.</p> <p>Where you report the case concluded date as on or after 1 December, the VAT amount you claim should be calculated at 15%, where you report the case concluded date as before 1 December VAT, you should calculate VAT at 17.5%.</p> <p>You should report the case concluded date as the date the work is actually concluded and not the end of counsel's work- the only exception is where the work was completed before 1 December and you need to apply the 15% rate due to the 14 day rule or an extension to it (see section on 14 day rule above). If this is the case, report the case concluded date as 1 December and explain the situation in an accompanying note.</p>
High Cost Cases	Standard reporting process with HCC team	Stage End Date	<p>Where each stage ends this is an interim bill and the VAT amount will be dictated by the stage end date.</p> <p>This rule also applies to disbs – see also below</p>
Crown Court Litigator Fee	LSC Online	Payment Request Date	<p>VAT is reported as a value.</p> <p>Where the payment request date is on or after 1st December, we will calculate VAT at 15%, where the payment request date is before 1 December, we will calculate VAT at 17.5%.</p> <p>This will apply to each payment requested, including any disbursements, per case.</p> <p>If you are treating a disbursement as a disbursement for VAT purposes ((in accordance with HMRC guidance paragraph 25.1, Notice 700 - The VAT guide) please see the separate disbursements section below this table.</p>
Disbursements & Prior Authorities	LSC Online (CDS6), CDS7, CDS8 & CDS4	Reported case concluded date	<p>The VAT rate applies consistently to all costs within the class, including any disbursements, and is therefore driven by the reported case concluded date.</p> <p>You should claim VAT on any disbursements in line with the reported case concluded date and not the date that any disbursements were incurred or paid by you.</p> <p>If you are treating a disbursement as a disbursement for VAT purposes ((in accordance with HMRC guidance paragraph 25.1, Notice 700 - The VAT guide) please see the separate disbursements section below.</p> <p>Prior Authorities are not a payment and so the above rule still applies in cases where a Prior Authority has been granted (which are granted net of VAT).</p>

Civil

Area of work	How to claim	Date we use to determine VAT rate	How will it work?
Civil Legal Help (except Immigration, Asylum & TFF). Including exceptional cases	LSC Online (CMRF)	Reported case concluded date	<p>When you report these cases on your CMRF you indicate if you want VAT to be applied and what the VAT amount is for any disbursements – per case. Where the case concluded date is on or after 1st December indicating 'yes' will result in VAT being applied at 15% to that case. The Disbursement rules are provided below.</p> <p>Although there maybe different levels reported (and fees credited) for each case only one claim is made per case, and as such the case concluded date will determine VAT.</p> <p>Exceptional Cases may be assessed and re-valued at a later date however as no further work is undertaken once the case is initially reported the case concluded date will remain the determining factor for VAT.</p> <p>If the case concluded date you report is different from the actual date the case concluded (see section on 14 day rule above), you must explain this in an accompanying note.</p>
Civil LH – Immigration & Asylum staged billing	LSC Online (CMRF)	Reported case concluded date	<p>The case concluded date for each stage (i.e. the stage concluded date) you report on the CMRF will determine which level of VAT is applied.</p> <p>Although the case may continue, the basic tax point is regarded as being the case concluded date, even where the case continues to stage 2.</p>
Licensed/Certificated Work – Bills	CLAIM1, 1A & CLAIM 2.	Reported case concluded date	<p>The case end date you report (called date last worked on) will determine which level of VAT is applied.</p>
Licensed/Certificated Work – Payment on Account (POA)	CLAIM 4	Reported case concluded date	<p>The VAT rate applies consistently to all costs within the class driven by the reported case concluded date.</p> <p>As a general rule Providers will account for VAT included in POAs at the appropriate rate for the date they receive the POA, however POAs are not interim bills and as such the case end date you report (called date last worked on) will determine which level of VAT is applied.</p>
Disbursements & Prior Authorities (Controlled work and Licensed work)	CLAIM1, 1A, CLAIM4, APP8 (licensed work) LSC Online (Controlled work)	Reported case concluded date	<p>The VAT rate applies consistently to all costs within the class, including any disbursements, and is therefore driven by the reported case concluded date.</p> <p>We ask therefore that you calculate the VAT on any disbursements in line with the reported case concluded date and not the date that any disbursements were incurred.</p> <p>If you are treating a disbursement as a disbursement for VAT purposes ((in accordance with HMRC guidance paragraph 25.1, Notice 700 - The VAT guide) please see the separate disbursements section below.</p> <p>Prior Authorities are not a payment and so the above rule still applies in cases where a Prior Authority has been granted (which are granted net of VAT).</p>

Area of work	How to claim	Date we use to determine VAT rate	How will it work?
Family Graduated Fee Scheme (FGF)	CLAIM 5	Reported Hearing Date	The hearing date you report will determine which level of VAT is applied. If you are claiming multiple hearings on the same CLAIM 5 each individual hearing date reported will determine which level of VAT is applied for that particular hearing.
Mediation	Controlled Work Report Form (CWRF)	Submission Date	As the case concluded date is not reported and as VAT is applied (or not applied) to a whole submission (and not on a case by case basis), the submission month will be used as a proxy for all cases. For example November's CWRF (received by us in December) will have VAT applied at 17.5%, and December's (received in January) will have VAT applied at 15%.

Costing Licensed/Certificated Work

Although a case may conclude as far as the client is concerned, additional work may be undertaken to assess and bill the case. As the LSC regards this as remunerable work the case concluded date (which can determine the VAT rate) must take into account any costing activity, whether it is undertaken in-house or externally.

If this is not something you currently do we ask that you change your billing processes as necessary to make sure the 'date last worked on' considers all remunerable work including any costing of the case.

Disbursements

As explained above, the VAT rate applies to the whole case cost. This will include disbursements already incurred, and some already paid (perhaps at 17.5%).

However as the value of work to be credited is calculated without VAT, and any VAT in addition to this amount is accounted for in your VAT returns, you will not 'lose out'.

If you treat a payment as a disbursement for VAT purposes (in accordance with HMRC guidance in paragraph 25.1, Notice 700 - The VAT guide), you cannot alter the original VAT charge (NB: there will not always be a VAT charge on such disbursements).

You should only be applying these rules to items that are disbursements as more strictly defined by HMRC. In these circumstances you will not account for any of this VAT in your VAT returns. You should claim these disbursements as a total amount (i.e. not a Net amount plus a separate VAT amount).

[Full guidance on what can be treated as a disbursement for VAT purposes is in the HMRC Notice 700 – The Vat Guide - paragraph 25.1](#)

www.hmrc.gov.uk/index.htm

Tailored Fixed Fees

Tailored Fixed Fees (TFF) are inclusive of disbursements, counsel's fees and VAT, as per Annex A & B of the General Civil Contract. We do not propose to change any of the TFFs because of this change to the VAT rate.

If you have any further queries about the application of VAT to the type of work you perform please contact your Relationship Manager. The LSC cannot provide VAT advice. For that, contact HMRC.