

## **Further Guidance on VAT**

1. The Commission together with The Law Society and HM Customs and Revenue have been working to further clarify the VAT treatment in relation to the place of supply of legal services, particularly the legal services provided to individuals who do not have either a right or permission to remain in the UK such as asylum seekers. As previously indicated this does not represent a change in HMRC policy. Following publication of advice in Focus 48, practitioners should have been changing their practice, where appropriate, in all closed but unbilled cases. The guidance below is further clarification.

### **General rule**

2. In certain cases, the place where a client belongs determines where the legal services are deemed to be made which in turn determines whether VAT is payable on those services. This is the case in respect of supplies of general legal services provided to individuals who belong outside the EU. Individuals receiving such supplies in a non-business capacity are treated as belonging in the country where they have their usual place of residence. For VAT purposes, individuals can only have one usual place of residence at any point in time and are normally resident in the country where they have set up home with their family and are in full time employment/education (for example, overseas forces personnel and students attending full-time, or degree courses at a college/university). Individuals are not treated as belonging in a country that they are only visiting as a tourist; are on short term educational courses, or here only for medical treatment.

3. Supplies of general legal services to individuals who belong in the EU are treated as being made where the supplier belongs. Where the supplier belongs in the UK, these will be subject to UK VAT. This might be an issue in relation to legal services provided to a person who belongs in a country which gained accession to the EU on 1 May 2005. Such services will only be subject to UK VAT when supplied after accession, although services relating to asylum applications should be treated as outlined in paragraph 5 below.

### **Place of supply of general legal services to a person with no right to remain in the UK**

4. For VAT purposes, persons who have not been granted either permission or a right to remain in the UK should be treated as belonging in their country of origin. This will apply to, for example, asylum seekers and those entering without permission. "Belonging" in this context involves something more than physical presence alone - see paragraph 2. In these circumstances, the country in which individuals have their usual or permanent place of residence can only reasonably be seen to be their country of origin unless and until they are granted the right to remain in the UK.

5. This policy applies to all supplies of legal services in relation to an application to remain in the UK (including services relating to that application,

or costs, after a judgement has been made) even if a final bill is rendered after the recipient has been granted the right to remain in the UK. Consequently if work is done after determination to close the file VAT need not be apportioned. However, where other legal services which are ongoing, VAT will need to be apportioned for work done for such services after the immigration decision is made and the client's status is determined- see para 6 below.

6. Once an individual is granted leave to remain in the UK, then the place of any legal services supplied to him thereafter (for example in relation to his obtaining a work permit) will be the UK [although there are special rules for services which relate to land].

### **Place of supply of general legal services to a person with a right to remain in the UK**

7. Where an individual is granted the right or permission to remain in the UK and this is subsequently revoked or expires for whatever reason, he should be treated, for VAT purposes, as resident in the UK until such time as the issue is concluded (including the time taken to go through any appeal process).

8. VAT should be charged on all relevant services according to the principle outlined in para. 5 above.

### **Exceptional circumstances**

9. In exceptional circumstances, an individual will not have an identifiable country of origin. Such individuals are in effect stateless and should be treated, for VAT purposes, as belonging in the UK, for example, a person granted exceptional leave to remain in the UK on the basis that his country of origin is unknown and his claim to be a British citizen cannot readily be verified.

### **What if I have been treating these supplies differently?**

10. If you have charged VAT on supplies of legal services which, according to this guidance, are outside the scope of UK VAT, you should not now make amendments in relation to past charges which were funded by legal aid. These principles apply to inter partes as well as legal aid only costs and so VAT cannot be charged onwards to paying parties, even if previously paid by the LSC.

### **Disbursements**

11. The rules for disbursements remain unchanged. However, one of the issues to consider is whether the supply is made to the solicitor, and subsumed in the onward supply of legal services, or made direct to the individual client and treated as a disbursement. The Commission and the Law Society are still in discussions with HMRC about these and further guidance will follow on this issue.

***Barristers fees***

13. These will follow the same principles as solicitors' profit costs.

*Any queries on VAT may be raised with your local tax office. Any legal aid issues may be raised with Ruth Symons – 0207 759 000 or [ruth.symons@legalservices.gov.uk](mailto:ruth.symons@legalservices.gov.uk).*