VAT Contracted out Services (COS) Guidance - government departments and NHS bodies – latest Tranche (2) issued 12 October 2015.

The VAT government and public bodies manual (VATGPB) is currently in the process of being transferred from the HMRC website to GOV.UK. An interim document was sent to NHS bodies with advice to treat as current guidance for the Headings included therein. The document included some changes to the first tranche of guidance published in March 2015. The updated guidance will be published in the VATGPB manual on GOV.UK in due course.

This document contains answers to a number of common questions that were put to HMRC following the release of the second tranche of guidance. Some questions are still under consideration, further advice will follow. There were also some scenarios presented in questions to HMRC that are uncommon in nature and generic guidance may not cover these. A specific non-statutory clearance request should be considered in these circumstances, see the link below. Provided the necessary criteria are met as set out in the guidance then please contact HMRC:

By Email to our Customer Coordinator team:
customercoordinator.pbg@hmrc.gsi.gov.uk

or write to HM Revenue and Customs at:

Public Bodies Enquiries S0927
Newcastle Upon Tyne
NE98 1ZZ
United Kingdom

or call: 0300 123 1081

Please read the following which gives guidance on clearance requests made to HMRC before considering submitting: https://www.gov.uk/guidance/non-statutory-clearance-service-guidance
Frequently Asked Questions:

Q1  **Heading 14:** “The supply and support of off the shelf software” is listed under exclusions. Does this mean that where an NHS body contracts for supply and support of off the shelf software the VAT is blocked but where the supply of off the shelf software is contracted for separately to the support, the VAT incurred on the supply of support is eligible for recovery?

*A:* This heading applies to services supplied to a government department or NHS body in its procurement of an IT system to its own specifications or wider government/NHS specifications and does not cover the supply and support of off-the-shelf software whether purchased together or independently. The guidance will be amended as follows:

“H14 - Excludes
The supply and/or support of off-the-shelf software”

Q2  **Heading 14:** “Hosting computer services” is now listed under “Includes”. Does this apply only from the start of the current financial year or the publication date? Alternatively, does this clarify what fell under the headings on a historical basis?

*A:* Hosting Services are recoverable under Heading 14 where they are supplied as part of a fully managed IT system supplied to the specifications of wider government/NHS specifications. Please see below comments on time limits for recovery.

Q3  **Heading 25:** Are NHS bodies able to recover the VAT incurred on Multi-Functional Devices using the 4 year cap?

*A:* The HFMA approached HMRC on 21/05/2013 asking for confirmation as to whether VAT was eligible for recovery under Heading 25 on multifunctional devices (MFDs). The initial HMRC response was that they were not included. HMRC presumes that prior to the enquiry from the HFMA the NHS were claiming VAT recovery on MFDs but stopped from 21/05/2013. Therefore when HMRC confirmed on 05/06/2015 that MFDs were eligible for recovery it was agreed that claims could be backdated to the 21/05/2013.
Q4  **Heading 26:** It is our understanding that in issuing the guidance, it was agreed that no fundamental changes would take place to the recovery position for NHS bodies. We have previously obtained confirmation that VAT refunds would be available where the vehicle has been hired for less than 30 days providing the supply includes repair and maintenance. The Guidance introduces a “30 consecutive days” element. Please confirm whether the original position remains or whether there has been a change to the heading.

A:  **Whilst HM Treasury’s view is that they view long-term car hire as covering a period of more than 30 consecutive days this view may not have been explicit in previous version of the COS guidance so this requirement will be removed from the current version. HM Treasury’s view however will be taken into account in any future revisions to the Treasury Direction.**

**The current guidance for Heading 26 will be amended as follows:**

“This Heading allows recovery where a government department or NHS body enters into a contract for the supply of a vehicle/vehicles and the repair and maintenance of these vehicles by the supplier is specified in the contract. HM Treasury view this as covering long-term car hire for a period of more than 30 consecutive days.

**Includes**

- Contracts for the hire of pool cars, company cars or other vehicles where the contract includes repair and maintenance by the supplier

**Excludes**

- Hire of vehicles alone where the contract does not include repair and maintenance, however the VAT on the separate supply of repair and maintenance will be recoverable under Heading 37

**Additional information**

- Where you have a contract which includes both the hire of vehicles without repair and maintenance and hire with repair and maintenance for less than 30 days and hire for 30 days or more, you can only recover the VAT in relation to the 30 days or more hire contracts which include repair and maintenance”
Q5  Heading 37: “PAT Testing” – Now listed under “Includes”. Does this apply only from the start of the current financial year or the publication date? Alternatively, does this clarify what fell under the headings on a historical basis?

A:  PAT testing is now listed in the annex to the COS guidance and confirms that it is recoverable under Heading 37. The previous version of the guidance did not list this as recoverable nor did it say it was specifically excluded. See below comments on times limits for recovery.

Q6  Heading 41: Please confirm the date you accept that the role of ODPs changed to include a nursing service and the reasons for that change if that change occurred less than 4 years ago?

A:  The background to including ODP's within Heading 41 is that following a consultation with the Department of Health (DH) we were told that ODP's are not registered nurses but are separately registered on the Healthcare Professionals Councils register and that the role of the ODP is changing. ODP's used to be employed solely to assist the anaesthetists but they are now more involved around the operating table and will act in both the recovery and scrubbing areas following a successful operation. This changing role of the ODP has, in the DH opinion, moved their services within the definition of nursing and while historically these individuals have not been eligible for recovery under Heading 41, due to the changes in their role ODP's can be classified as performing a “nursing service” across the NHS. The current COS guidance for Heading 41 states:

“...... nursing services...... include .... Operating Departmental Practitioners (ODPs) where due to the changes in the nature of their role they now provide a nursing service. Previously ODPs were excluded from Heading 41 as they were not providing a nursing service.”

The HMRC view is that it will be down to the individual NHS bodies to demonstrate that the role of the ODP has changed to a nursing service and to have this evidence available for PBG to check if required. We cannot provide a date from which ODP’s role changed to one of nursing services as this may vary between hospitals/Trusts.
Q7  Heading 57: “Vetting of staff for DBS” - Now listed under “Includes”. Does this apply only from the start of the current financial year or the publication date? Alternatively, does this clarify what fell under the headings on a historical basis?

A:  See below comments on time limits for recovery.

Q8  VATGPB9720 - “When can I re-claim VAT?” Should the word “VAT” be included in the second paragraph under “When can I reclaim VAT” to make it clearer which period the VAT should be reclaimed?

A:  The amended text will now read:

“In circumstances where you have received a supply on which no VAT has been charged by the supplier and they subsequently issue you with a VAT only invoice, you can recover the COS VAT in the period in which you received the VAT invoice.”

Q9  VATGPB9720 - Does the one year or four year time limit for recovery apply?

A:  The key point in determining whether a claim falls within the one-year or four-year rule is whether HMRC were asked by an NHS body or Government department if a particular service was eligible for COS recovery:

If HMRC have not been asked for a ruling or have not denied a claim then the one-year rule applies i.e. the COS VAT should normally be claimed within the financial year in which the supply in question has been received - subject to a 3 month adjustment period - the adjustment can be made no later than the June VAT return following the financial year end.

There will be circumstances where a ruling has been given to one or a few NHS bodies/government departments that VAT cannot be recovered under COS, and then it has been promulgated to the rest of the NHS/GD sector by means of networking, adviser activity or the HFMA or Government Departments’ ‘Centre of Excellence’. Should it transpire that the ruling was incorrect and COS VAT was recoverable, it is
reasonable to accept that all bodies should be given the benefit of this (where applicable) subject to the four-year cap.

There may also be circumstances where the ruling was not promulgated more widely. Here you need to ask yourself what ruling would have been given to other NHS bodies or GDs if they had enquired as well. If the answer is that they would have been given the same ruling as was given to those bodies which had enquired, then they too should be entitled to the benefit of COS VAT recovery (subject to the four-year cap) where the ruling turns out to have been incorrect.