HMRC - VATSC06000 - Staff And Employment

What constitutes a supply of staff?

There is a supply of staff when one party makes available its employee to another party - normally, through secondment of the employee - in return for a consideration. The consideration for such a supply need not necessarily be a fee but can constitute charges by the employer to the other party of wages, national insurance and similar employment costs it incurs while the employee is on secondment. Consideration can also arise where these costs are paid by the other party direct to the employee, HMRC etc - but see the section below about a Statement of Practice under which concessionary treatment applies to certain staff secondments in these circumstances.

What is the position with employee services generally?

It is important to remember that tax is due on the supplies of staff because an employer is making available the use of its staff to another, non-employer, party. Otherwise the provision of services by an employee to his or her employer is outside the scope of VAT. This is because the EC Principal VAT Directive defines a taxable person as a person acting independently and Article 10 of the Directive holds that the term independently excludes:

employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.

What significance has joint employment for supplies of staff?

It follows from Article 10 that if staff are jointly employed by two or more parties it is not possible for one of the employers to make a taxable supply of the staff to another, even where it may charge part of the wages etc costs of the staff. Joint employment is covered in more detail in Notice 700/34 Staff.

Temporary suspension of employment

There also is no taxable supply where a secondment involves a temporary suspension of the original employment contract and the person to whom the employee is seconded becomes the employer for the relevant period. This is underwritten by the decision in the tribunal case of Commonwealth Telecommunications Bureau (LON/75/25).

In this case the Post Office (PO) seconded one of its employees to the Bureau (CTB) under terms whereby the employee had the right to return to the PO, was eligible for promotion in absentia and stayed in the PO pension scheme. Also, the employee had sought the secondment for his own career development reasons and the move was largely for his benefit rather than the PO or CTB. However, in taking up the post he had countersigned a letter which set out conditions of service with CTB.

The tribunal accepted that the letter constituted a contract of employment and that, while it was in effect, the original contract with the PO was suspended. It followed there was no supply of staff.

In line with this decision we consider the following points are relevant in determining if, in a given case, a temporary suspension of employment takes place:

Is there a separate contract or conditions of employment?

What rights does the employee retain with the original employer?

Who fixes the salaries?

Statement of practice - Concessionary treatment for certain supplies of staff

The arrangements set out in the following paragraph applied from 1 April 1997, continued until 31 March 2009, and were withdrawn with effect from 1 April 2009 as a result of the HMRC’s review of the impact on employment businesses of the Conduct of Employment Agencies and Employment Businesses Regulations which were made by the DTI on 17 December 2003.

This concession is WITHDRAWN with effect from 1st April 2009

Where an employment business within the meaning of the Employment Agencies Act 1973 supplies a member of its staff (the employee) to another business which -

a. is responsible for paying the employee’s remuneration directly to the employee, and/or

b. discharges the obligations of the employment business to pay any third party PAYE, NICs, pension contributions and similar payments relating to the employee,

then, to the extent that any such payments as are mentioned in paragraphs (a) and (b) above form the consideration or part of the consideration for the supply of the employee to the other business they shall be disregarded in determining the value of the supply of the employee.

HMRC accepts that the condition at point a. for the payment of the employees salary by the client directly to him may be discharged by the client having a contract with a payroll company. The payroll company may be owned by, but separate from, the employment business.

Business Brief 10/04 confirmed that the terms of the concession above also apply to employment bureaux which act as agents for VAT purposes and hire out self-employed work-seekers, and contains further guidance on the treatment of such businesses.

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