

## VAT on pension scheme services – further HMRC guidance and extension of transitional period

HM Revenue & Customs has published a further [update](#) on employer recovery of VAT charged on services provided to trust-based pension schemes.

### Background

Prior to 2014, HMRC allowed employers to recover VAT paid on administration services provided to their pension schemes, but not VAT paid on investment management (“IM”) services. However, HMRC allowed the employer to treat 30% of invoices for IM services as relating to administration and to therefore recover VAT on that 30% (unless the employer could provide evidence to HMRC that it should be entitled to recover a higher proportion). Whilst in theory the pension scheme may have been entitled to recover VAT on the other 70%, its rate of recovery was usually much lower than the employer’s (and often it did not recover any VAT at all).

In 2013, the Court of Justice of the European Union decided in the *PPG* case that an employer was entitled to recover the VAT charged on both administration and IM services provided to its pension scheme if there was a direct and immediate link between the services and the employer’s economic activities as a whole. It was for the national court to decide whether there was a direct and immediate link.

In 2014, HMRC issued three pieces of guidance setting out its policy on employer recovery of VAT on pension scheme services in the light of *PPG*. The cumulative effect of this guidance was that HMRC would only allow the employer to recover the VAT if the services had been supplied to the employer.<sup>1</sup> Exactly when services would be deemed to have been supplied to the employer was by no means clear, but a further piece of guidance published in March 2015

indicated that a tripartite agreement for IM services between the employer, the trustees and the fund manager could be used as evidence that the employer was the recipient of the IM services under that agreement if the agreement satisfied certain criteria<sup>2</sup>.

### HMRC’s latest guidance

The latest guidance is very much an interim update on the status of HMRC’s work in relation to employer recovery of VAT on IM services provided to pension schemes, and further guidance is promised later this year.

The two most important elements of the guidance are that:

- the transitional period whereby the 70/30 split still applies has been extended for a further 12 months, until 31 December 2016; and
- HMRC considers that, where an employer pays for IM services under a tripartite agreement, it cannot claim a corporation tax deduction in respect of those fees.

The guidance also sets out HMRC’s latest position on other possible arrangements which might allow employers to achieve a VAT deduction for the costs of administering trust-based pension schemes and managing their assets going forwards. One arrangement would involve the trustees contracting with the employer to provide the employer with the service of running the pension scheme on the employer’s behalf. The other would involve the trustee entering a VAT grouping with the employer (this option would obviously only be available to a corporate trustee). It is not clear, however, that either of these options would enable the employer to recover VAT on IM costs, and HMRC is still considering representations on both options, as well as other representations from the industry.

<sup>1</sup> For more details, see our February 2014 [legal update](#) and our November 2014 [legal update](#).

<sup>2</sup> For more details, see our May 2015 [Trustee Quarterly Review](#).

## Comment

HMRC's decision to extend the transitional period for a further 12 months is extremely welcome given the continuing uncertainty surrounding employer VAT recovery. However, HMRC's position on the corporation tax effect of the employer paying for a pension scheme's IM services directly under a tripartite agreement will be of concern to many employers.

In terms of what schemes and employers should do to improve the employer's rate of VAT recovery, there is no "one size fits all" solution – it will depend on a number of factors, including the circumstances of both scheme and employer. It is imperative that both the trustees and the employer's tax function are involved in any consideration of whether to adjust the scheme's arrangements for the provision of IM and other services.

In light of the extension of the transitional period, we would recommend that schemes and employers should hold off on making any decisions, pending publication of the further guidance promised by HMRC later this year.

If you have any questions about this update, please get in touch with your usual Mayer Brown contact.

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