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VAT and pensions post PPG

Lynette Lewis

19 June 2014



VAT and pensions post PPG

- Introduction
- Pre PPG
- PPG the facts
- HMRC's reaction
- Options



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Pre PPG – Notice 700/17

- VAT on pension fund administration was input tax of the employer
- VAT on pension fund activity was input tax of the trustees and not recoverable by the employer
- Combined supplied of investment and administration could be split 70:30



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PPG the facts

- PPG set up a legally and fiscally separate pension fund
- Subsidiary of PPG entered into contracts with suppliers of pension administration and asset management services
- Costs were paid by the subsidiary and not passed onto scheme



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PPG Judgment - CJEU

- Taxable person can deduct input tax where the costs form part of general overheads
- PPG complied with Dutch law and set up pension fund
- Denying the right to deduct would breach fiscal neutrality and freedom to choose a tax efficient structure



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HMRC's reaction

- PPG put HMRC policy into doubt
- Notice 700/17 updated
- 70/30 split withdrawn but transitional period to Autumn 2014
- Reiteration of direct and immediate link test paves the way between overhead costs and specific supplies and HMRC's new policy
- Specific investment management costs relating to property or financial investments cannot be overhead costs and therefore not recoverable by the employer



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HMRC's reaction (2)

Employer may only recover where either:-

- relevant services are either scheme administration only; or
- a combined supply of both scheme administration and investment management; and

Supply must be received by the employer rather than the scheme; and

Services must be paid for by the employer



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HMRC's reaction (3)

Where the employer receives the supply but scheme bears the cost the employer must charge output VAT equivalent to input VAT

Costs incurred by scheme are recoverable if it is engaged in taxable activity



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HMRC's reaction – what next?

- HMRC's policy is only to allow VAT recovery by the employer where the input VAT is that of the employer
- Principles apply to investment management fees, lawyers, actuaries, accountants and other service providers
- HMRC has announced it will issue further guidance in Autumn 2014 and will update Notice 700/17



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How does this fit in with pensions law?

- Schemes established under trust
- Section 47 – trustees must appoint own advisers
- Trustees responsible for administration and management
- Expense rule



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The options

- Possible to re-arrange contracts with employer and service provider and stay within VAT and pension law? Joint engagements?
- Economic and fiscal neutrality arguments
- Pension restructuring – tax transparent funds
- Future developments



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Questions

Comments

Expressions of individual views by members of the Institute and Faculty of Actuaries and its staff are encouraged.

The views expressed in this presentation are those of the presenter.



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