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VAT | Issues for UK Pension Schemes and Advisers

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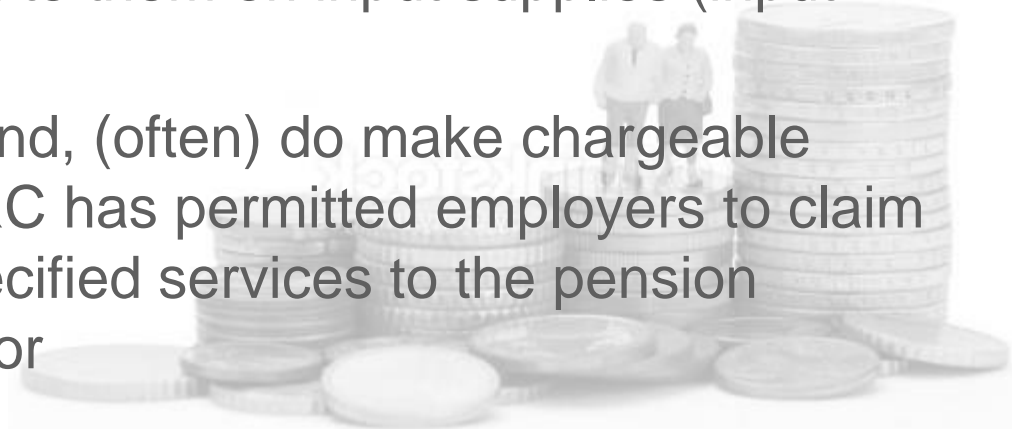
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Agenda

- VAT and pension schemes
- VAT and pension scheme investment fees
- ‘Special investment funds’ and ATP case
- PPG case
- HMRC Briefs: 43 and 44
- Tripartite Agreements: HMRC requirements
- Issues with Tripartite Agreements
- VAT Group registration
- What should we be doing?

VAT and Pension Schemes

- VAT is chargeable on supplies of professional services (inter alia) ('chargeable supplies')
- In a pension scheme context, this includes supplies of legal, actuarial/consulting, administration and investment management services (input supplies)
- However, Trustees do not generally make chargeable supplies against which VAT charged to them on input supplies (input tax) can be claimed
- Employers, on the other hand, (often) do make chargeable supplies and (to date) HMRC has permitted employers to claim input tax for supplies of specified services to the pension schemes which they sponsor



VAT and Pension Schemes

- HMRC VAT 'rules' are set out in a series of 'Notices' and 'Briefs'
- Main legislative framework is the EU VAT Directive and the Value Added Taxes Act 1994
- HMRC has always accepted that VAT on services for setting up and managing a pension scheme is employer input tax, but has treated investment services differently
- To claim input tax employer must hold tax invoices made out in its name...
- Since PPG and ATP cases, new HMRC Briefs and new practice



VAT and pension scheme investment management fees

- VAT is not charged on supply of investment or fund management services where scheme assets are invested in:
 - a 'special investment fund' (and ATP case expands this definition) or
 - a managed fund policy (insurance wrapper)because such services will be 'exempt supplies'. (In practice, the investment services charges are not separately invoiced)
- Prior to PPG, VAT on investment management services supplied directly to a UK pension scheme could not be reclaimed by employer, subject to the 70/30 rule
- 70/30 rule: HMRC permitted 30% of a 'combined' invoice to be treated as management services (therefore input tax) while 70% was treated as investment services (and therefore not input tax). This rule will cease to apply from the end of this year

Special Investment Funds (SIFs) (1)



- EU VAT Directive exempts “*management of special investment funds as defined by member states*” from VAT
 - VAT is not payable on supplies of management services to SIFs
- What are SIFs?
 - In the UK, broadly, pooled funds such as: Authorised Unit Trust Schemes and Open-Ended Investment Companies

Claverhouse decision (CJEU: June 2007)

- SIF definition capable of including closed-ended investment funds, such as investment trust companies (ITCs), so UK was wrong to apply different treatment to these vehicles
- *VAT exemption extended in UK to ITCs with effect from 1 October 2008*

Special Investment Funds (SIFs) (2)



Wheels case (CJEU: March 2013)

- common investment fund for UK defined benefit schemes was not a SIF because:
 - investment not open to members of the public
 - not sufficiently comparable to collective investment undertaking so as to be in competition with it

ATP case (CJEU: March 2014)

- a DC arrangement can constitute a special investment fund and claim exemption from VAT on fund management services supplied to it:
 - scheme is funded by the members;
 - the funds are invested using a risk-spreading principle; and
 - the member bears the investment risk
- HMRC Brief 44 (2014) develops this further

PPG Holdings | CJEU decision (July 2013): employer input tax



- Dutch company paid its pension scheme's investment management costs and administration costs (directly)
- Scheme was DB and legally separate from the group
- CJEU found that VAT incurred on both types of services could be deductible provided there was a 'direct and immediate link' between these costs and the company's economic activities as a whole
- Went against AG's opinion who had said that investment management services were linked to pension fund's own exempt activity not the employer's (fiscally distinct)
- Up to national court to decide whether the cost of investment management services formed part of the employer's general costs
- CJEU did not comment on whether services provided to this DB pension fund fell within exemption for management services provided to "SIFs"

HMRC position



- Revenue & Customs Brief 06/14 (3 February 2014)
 - PPG case confirms that employer can deduct VAT incurred on administration and pension fund management services, provided there is direct and immediate link between services and employer's own supplies
- HMRC policy going forward will not permit deduction for:
 - administration services where supplies not made to employer
 - where supply is limited to investment management services
- HMRC will require equivalent amount of output VAT by trustees where employer is reimbursed for costs it has paid
- HMRC position developed further in Brief 43 (2014) and Brief 8 (2015)

HMRC Brief 43 (2014)

Published
November 2014

- Further clarifies HMRC review of PPG case:
 - relevant principle: VAT incurred on services supplied to a person is deductible if used for person's onward taxable supplies. Therefore it's necessary to determine:
 - whether goods and services are supplied to the taxable person - "highly fact sensitive"; and
 - whether it's used for onward taxable supplies
- N.B. 'Airtours' case

HMRC Brief 8 (2015) | Tripartite Agreements

Published
26 March 2015
Applies only in
respect of fund
management
costs

- A 'tripartite' agreement must cover the following:
 - Employer receives supplies
 - Employer and Trustee both entitled to seek redress for breach
 - Employer pays costs; and service provider will pursue employer for costs
 - Fund management reports to be provided to Employer on request, but Trustee can stipulate reports are withheld, e.g. if conflict of interest
 - Employer entitled to terminate contract, but this may be subject to Trustee consent

Tripartite Agreements | Issues

- Still awaiting HMRC guidance on other types of management services (also for other types of pension scheme (DC/Hybrid) and for trustees that charge employers to run pension schemes)
- How do tripartite agreements fit with professional duties owed to clients by e.g. actuaries and lawyers?
 - will term curtailing employer's right to see advice be invoked as a matter of course?
 - do we need to register employer as a client or have two engagements – one tripartite and one not?
- Other solutions: side letters? include a standard clause in trust deeds to effect that trustees would be contracting for services on behalf of employer?

VAT Group Registration

- A corporate trustee that is wholly owned within the relevant group may be able to form part of a group registration
- Subject to agreement of local HMRC inspector
- Any business supplies by trustees are treated as being made by the representative member (may be adverse consequences on group to extent these are exempt supplies: ringfence?)
- Input supply: tax can be treated as being received by representative member (N.A. to participating employers which are outside VAT group)
- Risk to trustees as all group members are jointly and severally liable? Can this be mitigated?

What should we be doing as professional advisers?

- Encourage our clients to review current systems:
 - Employer clients: discuss with Tax Director:
 - Trustees to pay VAT?
 - Go for Tripartite Agreements?
 - Go for VAT Group registration?
 - Trustee clients: ask Employers what they want to do
- Review past invoices:
 - Can VAT be reclaimed under PPG?
 - Can VAT be reclaimed under ATP?
 - Can VAT be reclaimed under recent Investment Trust Companies case (extending 4-year limit)?
- Offer tripartite agreements?

Any Questions?





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