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21 VAT on Viability Studies

There have been difficulties for some years in determining to whom the services of an investigating accountant are supplied, and more importantly, who may recover the VAT on those services. The matter was last addressed in Technical Bulletin 9.7 (May 1992). H M Customs and Excise (‘Customs’) have now finalised their policy on these difficult issues and this note sets out that policy; Customs have agreed its issue by SPI.

The policy set out in this note will take effect from 1 May 1995. As from that date an investigating accountant will have to consider who has commissioned the work and instructed him, and who receives the end product, when deciding to whom he has supplied his services and to whom he must issue his invoice.

Where the company commissions the work and receives the report, the supply by the investigating accountant is to the company for the purpose of its business. The company can recover the VAT incurred on the costs as an overhead of its business and to the extent allowed under any partial exemption method it has agreed with Customs. Invoices should be addressed to the company to allow such recovery. This will apply even if the bank, or any other third party, receives a copy of the report. Customs have advised that acknowledgement of a separate duty of care to the bank by the investigating accountant will not prejudice this supply route, or the ability of the company to recover the VAT on the costs of the viability study.

Where the bank commissions the work and receives the report, the supply of services by the investigating accountant is to the bank for the purpose of its business. The bank will be able to recover the VAT incurred on the costs in accordance with its partial exemption method (or any other agreement that it may have with Customs on this point). This treatment will apply even if the company receives copies of the report. The investigating accountant must issue his invoice to the bank and the fact that the company ultimately pays for the work is irrelevant.

The issue becomes more complicated where the company commissions the work but does not receive all of the report, for example where the bank requires a confidential security review as part of the investigation. In these circumstances, there are two separate supplies by the investigating accountant: one to the company with the advice that it requires in that part of the report that it receives (probably the majority of the work), and another to the bank for the work done exclusively for it and to which the company has no access. The investigating accountant should issue separate invoices for the work undertaken, one to the company and one to the bank. It may be advisable for the investigating accountant to enter into two separate contracts, one with the company and one with the bank, in these circumstances. The services of the investigating accountant are received for the purpose of the company’s and the bank’s businesses respectively, and they can recover the relevant VAT incurred thereon, subject to any partial exemption method agreed with Customs. If the company commissions the work but does not receive any of the work product, the supply by the investigating accountant is not received by the company for the purpose of its business and the VAT incurred thereon is not recoverable.

If an investigating accountant acts for both the company and the bank, it is assumed that he will receive separate instructions from each of them and will provide the work product to each of them in accordance with those instructions. The investigating accountant should issue separate invoices, one to the company and one to the bank, for the work he has performed for each of them. If, unusually, joint instructions are issued to the investigating accountant by the company and the bank, and both the company and the bank receive the same work product, the investigating accountant will be treated as having provided his services equally to both of them. In these circumstances, it is expected that the investigating accountant will invoice his work 50:50 to the company and the bank. In both these instances, Customs accept that the services are supplied for the purposes of the company's and the bank's businesses and they can, therefore, recover the relevant VAT incurred subject to any partial exemption method agreed with Customs.

To summarise, for ease of determining to whom the supply is made when the company commissions the work, Customs have stated that the dividing line will be whether the company has access to the end product of the work, eg the report. If the company has no access to the work product, even if it commissions it and pays for it, the supply is not for the purpose of its business, even though it may be for its benefit, and the company cannot recover the VAT incurred on the costs of the investigation.

It is hoped that the above will provide certainty for investigating accountants, the companies commissioning the work and the banks as to who receives the supply of services, who should be invoiced for those services, and who can recover the VAT incurred on the costs.