



VAT & Pension Schemes

The Old Position

Until the recent developments, the position was broadly as follows:

- There was no particular distinction (for VAT purposes) between DB and DC schemes.
- A bill addressed to the trustee, and indeed paid by the trustees, could still form the basis for a VAT reclaim by the employer – so long as it related to administration and not investment services.

In this context “investment” meant “investment management”. And “administration” meant everything else – including investment consulting, actuarial etc.

The new position

Recent EU court cases have torn this arrangement into pieces. At a high level – there were two key changes – and they more or less reversed both of the bullets above:

- There now is a sharp distinction between DB and DC schemes. Services to or in respect of DC schemes now look to be VAT exempt. However, unless you manage to jump through hoops, services to DB schemes are not.

- On the other hand, the distinction between administration and investment services above seems to have fallen. So, if you are a DC scheme, then your administration and investment bills might now give rise to VAT offset/exemption. (Technically, HMRC have now said that “only fund management and administration services that are integral (i.e. specific and essential) to the operation of a pension fund will qualify for exemption”. This precludes supervisory services.)

Thus, good news for DC schemes, bad news for DB – unless as we said above, your DB is able to jump through hoops – in which case you may still be able to reclaim VAT on bills, extending also to the investment side.

The hoops seem to be that the contract for services (administration, actuarial, legal, investment etc) needs to be with the employer. But clearly the client is the trustee. It may be that you can arrange a tripartite contract that ticks the VAT-man’s box, and still enables you to have clear line of sight on conflicts of interest, legal liability, duty of care etc. This remains to be seen, and would require specific legal and VAT advice.

Note on VAT

VAT on pension scheme fees is a long-running saga. Recent months have seen yet more activity; Court cases and changes in HMRC policy. This is a complex and somewhat opaque area, which we will try to summarise as briefly as possible in this bulletin as it relates to trust-based occupation pension schemes

In the meantime

There is a transitional period, while HMRC lets the industry sort some matters out. We believe that the transitional arrangement was really to let trustees and employers which used an arcane 70:30 rule on VAT reclaims to have time (until 1 January 2016) to work out their responses to the above. It may be that the transition is wider, and HMRC will continue to allow VAT on admin for (DB) schemes, but it may be these will now be rejected.

Actions / consequences

For fees relating to DC schemes where businesses have accounted for VAT on pension fund services which now qualify for exemption, a refund claim may be possible. The usual 4 year rule on reclaims will apply.

For DB schemes, the VAT reclaims may now fail or may fail from 1 January 2016 – unless you manage to jump through the necessary hoops to the VAT man’s satisfaction.