HM Revenue & Customs

Wealthy and Mid-sized Business Compliance Public Bodies
S0927
NEWCASTLE
NE98 1ZZ

For the attention of the Finance Director
«Business_Name»
«Address2»
«Address3»
«Address4»
«Postcode»

Email customercoordinator.pbg@hmrc.gsi.gov.uk

Web www.gov.uk

Date 19 September 2017
Our ref «VRN»

Dear Sir or Madam

As you may be aware, following the Astra Zeneca Ruling it has been necessary to review the VAT treatment of salary sacrifice lease cars in the NHS.

HMRC has now considered the position and compiled a Frequently Asked Questions document (copy attached), to explain our view.

Should any trust consider that they have an over or under declaration of VAT, on their salary sacrifice lease cars, they should contact in the first instance, their Customer Relationship Manager or the customercoordinator.pbg@hmrc.gsi.gov.uk or write to HM Revenue and Customs at:

Public Bodies Enquiries S0927
Newcastle Upon Tyne
NE98 1ZZ
United Kingdom

Should any adjustments be required to the VAT return, form VAT 652 should be used. Can you please clearly mark your email with 'Salary Sacrifice Lease Cars' in the subject title.

If you write to us please send your letter to Wealthy and Mid-sized Business Compliance using the above address. If you don't use the correct address we may not get your letter.

Yours faithfully

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Michele Rapier
Business Unit Head

To find out what you can expect from us and what we expect from you go to **www.gov.uk/hmrc/your-charter** and have a look at 'Your Charter'.

Ultimately regardless of the detailed use of the car, private motoring must be accounted for. This is achieved by either restricting the claim to Input VAT or accounting for Output VAT. Each Trust has the option to consider and select the most appropriate VAT treatment for their circumstances. The selected VAT treatment must then be applied on a scheme by scheme basis.

1. Why is the retrospection date 1 January 2012?

   This date is taken from Revenue & Customs Brief 28/11 and is the date that the NHS is required to review their VAT treatments of salary sacrifice cars, to take account of the Astra Zeneca ruling. This however does not override the four year Cap. HMRC considers the issue of the guidance note as a means to protect any adjustments or assessments going back to and including October 2012.

2. What is the penalty position on any Salary Sacrifice assessment made?

   Any assessment or adjustment to be made that brings the Trust in line with the guidance note, will unless there is significant evidence to suggest otherwise, be deemed as Mistake Despite Taking Reasonable Care (MDTRC). Therefore no penalty will be charged.

3. If a Trust operates a Salary Sacrifice Scheme that currently recovers 100% Input Tax and accounts for Output Tax, does it need to change to use the 50% Input Tax restriction?

   The Trust should consider the most appropriate VAT treatment for their circumstances. Where a Trust has claimed 100% Input VAT and charged Output Tax, they can continue to do so. If the Trust considers the 50% simplification to be the most appropriate VAT treatment then this can now be applied both going forward and retrospectively. Should the Trust chose to apply this retrospectively, they must recognise that any reclaim of Output Tax is to be repaid to the car user, under unfair enrichment. This payment would then become subject to PAYE, NICS and Pensions contributions, for both employer and employee.

4. Does the 50% restriction apply to both the lease and repair and maintenance costs of the car?

   Where the conditions in VAT Notice 700/57 Paragraph 13 to determine a supply of a lease car and a supply of repair and maintenance (multiple supply) are satisfied, the 50% restriction is only applied to the finance element and the maintenance element is recoverable at 100%.

5. What is the VAT treatment of the onward supply to an employee when the lease car has been procured from another Trust in the same division?

   The divisional registration means that there is no VAT charge on the supply between the two Trusts within the same division. VAT treatments should be applied across the division. So if the Input Tax has been restricted coming into the division then there will be no Output Tax to charge on the onward supply out of the division. If however Input Tax has been claimed in full coming into the division then Output Tax is due on the onward supply out of the division.

6. Will the 50% restriction only apply to the first car under Salary Sacrifice even if a second car is used for NHS statutory activity?

Under the guidance note we do not determine the actual use of the lease car. We accept that there will be some use for NHS statutory activity however this simplification is only available for the first car as the second car is considered to be a business activity.

7. Where the Trust charges Output Tax and claims full Input VAT is this claim still recoverable under COS Heading 26?

   HMRC has reviewed its position regarding this treatment. Unlike Salary Deduction schemes, Salary Sacrifice schemes are predominantly private use, and a business activity to which Output Tax has been charged. This is also the case with second / family and friends cars. Recovery is therefore not appropriate under COS Heading 26, and any Input VAT due should be recovered as Input Tax under the normal VAT accounting rules.

8. Is the income from salary sacrifice lease car schemes treated as taxable income for the purposes of Partial Exemption calculations if the Output Tax is charged or if a restriction is applied?

   Yes the income would be included as taxable income in a Standard Method calculation. However a Trust should consider whether or not the inclusion of this income is distortive.

   A distortion may occur because the associated VAT is wholly recoverable under COS Heading 26 or directly attributable to the Output Tax charged. The income is unlikely to consume as much of the overhead costs incurred by the Trust as its inclusion in a turnover calculation would suggest. (The reverse would equally apply to any exempt outputs such as childcare vouchers).

   Paragraph 5 of VAT Notice 706 details what steps are required if the standard method doesn't give a fair and reasonable result.

   If the Trust applies for a Partial Exemption Special Method it should explain why it has included or excluded this income in its method proposal. The Framework for NHS Bodies VAT Recovery Calculation Methods gives more information on the principles about what a fair and reasonable method would look like.

9. What is the VAT position of a supply of a lease car that includes insurance?

   Where there are two distinct supplies each independent of the other, the consideration received which relates solely to the insurance is exempt from VAT. Where there is one principal supply of a Salary Sacrifice lease car to which the other goods or services are ancillary, the whole transaction will follow the tax treatment of the principal supply. This means that where insurance is ancillary to a supply of Salary Sacrifice lease car, the whole consideration received will be liable to VAT at the appropriate rate. VAT Notice 701/36 Section 4 should be consulted if a Trust considers that it is making multiple supplies that include insurance.

10. Are excess miles subject to the 50% restriction?

    Where the conditions in VAT Notice 700/57 paragraph 13, to determine a supply of a lease car and a supply of repair and maintenance (multiple supply) are satisfied, the excess mileage charges, being a rental adjustment, should be separated into two distinct elements, on a basis identical to the split of the rental. In this way, VAT on the financing element of the excess mileage charge will be subject to the 50% restriction and input VAT on the services element will be recoverable subject to the normal rules.