

VAT refund scheme for hospices – detailed Q&A

Introduction

Hospice UK were delighted to secure the introduction of a VAT refund scheme for hospices, which was passed into law as part of the Finance Act 2015 at the end of March 2015.

Hospice UK have been working with the Treasury and HMRC for a number of years to develop this scheme. We are extremely grateful for the support from the Charity Tax Group (Link: <http://www.ctrg.org.uk/home>) and our technical advisor Peter Ladanyi (Link: <http://vat-help.co.uk/>)

The information below is intended as a summary of the discussions we have had with HMRC and an introduction to the refund scheme.

It does not constitute tax advice.

Given the sums involved, all hospices are advised to seek independent professional advice in order to ensure they comply with the terms of the refund scheme and benefit fully from it.

Who is eligible for the refund scheme?

The scheme is intended to benefit palliative care charities, both adults and children's.

It is a UK wide scheme.

Organisations which are not charities may not benefit from the scheme. (This also means that trading subsidiaries of hospices may not benefit from the scheme). Similarly, organisations that are not hospices, but which provide some palliative care (e.g. a nursing home) cannot benefit from the scheme).

What is the precise definition of palliative care charity?

Palliative care charity is defined in the Finance Act 2015 as a charity the main purpose of which is the provision of palliative care at the direction of, or under the supervision of, a medical professional to persons who are in need of such care as a result of having a terminal illness.

A medical professional is defined as a registered medical practitioner, or a registered nurse.

Therefore, hospices which provide a nurse led service are eligible for the scheme.

HMRC have also confirmed that the inclusion of the term "terminal illness" is not intended to exclude children's hospices, and that children's hospices are definitely considered eligible for the scheme.

How is primary purpose defined?

HMRC have advised that they will focus on the objects of the charity, and the proportion of its income, expenditure and staff numbers that focus on palliative care as opposed to other areas of activity.

What if a charity provides palliative care as well as other services (e.g. running a grant funded domiciliary care agency)

It depends on whether they meet the primary purpose test.

If the organisation meets the primary purpose test, they can recover the input VAT on all their non-business activities, not just their palliative care activities

But if they do not meet the primary purpose test, they cannot recover any of the input VAT on their non-business activities.

HMRC have indicated that in the instance of a charity not meeting the primary purpose test, if they wanted to move those palliative care activities into a separate charity under common control that would benefit from the refund scheme, this would not be considered tax avoidance.

What VAT could hospices recover before the refund scheme was introduced

The amount of tax hospices could recover on the inputs (costs) depends on the VAT treatment of their outputs (income).

All income will fall into one of three categories:

- Taxable (also referred to as business; current rates are 20%, 5% and 0%)
- Exempt from VAT
- Outside the scope of VAT (also referred to as non-business)

In turn, the costs of a hospice will either relate to activities directly linked to one of the above categories, or they will be overheads (costs that relate to more than one of the above categories).

For example, consider a very simple hospice which has:

- A shop which sells donated goods (income is taxable at 0%)
- Runs its own lottery (income is exempt from VAT)
- Has an inpatient unit funded by the profits from the above plus a government grant (non-business / outside the scope of VAT)

The treatment of its costs would be as follows:

- It **would** be able to recover all the VAT it incurs on costs that solely relate to the shop.
- It **would not be** able to recover any of the costs that solely relate to the lottery
- It **would not be** able to recover any of the costs that relate solely to the inpatient unit.
- It would be able to recover **a proportion** of the costs that do not relate specifically to any of the above activities (e.g. costs of an IT contract to support the entire business)

For the average hospices, this meant they could recover little or none of their VAT, which was therefore a significant cost to the charity.

What VAT can hospices recover after the refund scheme has been introduced?

The refund scheme is to cover the costs incurred on the non business activities.

Hospices can continue to recover the vat on their business activities and will still not be able to recover the VAT on their exempt activities.

Since most activities for charitable hospices will be non-business, this means that from 1 April 2015 they move from a position of being able to recover very little of their input VAT to being able to recover the **majority of their VAT**.

It is also likely that hospices will be able to recover more of the VAT on their overheads than they did previously.

How do I know whether my income for a certain activity is taxable, exempt or non-business?

This is an area where hospices should take specialist advice if they are in any doubt.

The main issue hospices are likely to have is with their government funding, and whether this constitutes non business or exempt income.

The key question is whether the government income is considered to be a grant or contractual income.

If it is considered a grant (albeit there may be some general conditions attached) then the income will be classed as non-business income, and hospices will be able to recover the input VAT.

But if it is considered a contract, then this is likely to be classed as exempt income, meaning hospices cannot recover the input VAT.

The decision as to whether a form of income will be considered non-business or exempt will depend on the exact terms of any agreement. Broadly speaking, if the funding relates to a specific named individual or care plan then it is likely to be classified as exempt, whereas if it just has some general conditions (e.g. the hospice will provide palliative care to 500 individuals in its inpatient unit during the year) then it is likely to be classified as non-business. If in doubt, hospices should seek advice.

HMRC have reviewed an example of a hospice which receives income under the NHS England Standard Contract, and concluded that because the terms were still fairly general, this constituted non-business income.

It therefore all depends on the exact terms of the contract, and how specific it is.

How is income under a Continuing Care Contract treated

In 2015, HMRC advised that income received under a Continuing Care Contract constituted contractual income and should be treated as exempt from VAT because the contracts typically refer to specified named individuals.

Hospice UK obtained a QC's opinion challenging this interpretation, and in November 2018, HMRC accepted that such income could in fact be classified as non-business.

This means that hospices can now recover the input VAT in relation to the delivery of such contracts.

Hospices who have previously treated this income as exempt may also be due refunds for past periods.

Some or all of my income is from exempt income does this mean that my hospice cannot benefit from the refund scheme?

If some of a hospices' income is exempt income, but it is also part funded by a grant (or under the NHS Standard Contract in England) then they will still benefit from the scheme, but the level of benefit will be reduced proportionately.

If all of the income for running a particular service – e.g. inpatient unit – is exempt income, then the hospice would not currently be able to recover any of the costs for that area of activity.

How will proposed changes to NHS funding in England affect the refund scheme?

As no specific funding scheme has yet been proposed, it is not possible to comment definitively.

There is a risk that if the new funding scheme focusses more on funding related to specific individuals, it may affect the refund scheme.

However, Hospice UK took the view that it was more important to get a refund scheme enshrined in law and operating rather than holding it up (or preventing it entirely) based on what might happen in the future.

In addition, as noted above, we have put forward an argument that where services are at least 15% subsidised, they should always be considered non-business income.

How do hospices calculate what proportion of VAT they should recover on their overhead costs?

This is a very technical area which is likely to require specialist advice.

In particular, hospices who are VAT registered and therefore already have a method of method in place for calculating this should note that the method used prior to 31 March 2015 may well not be the most appropriate (or efficient) after 1 April 2015. This is particularly true of income based methods which could result in a lower recovery than other methods under the new rules.

Therefore it is strongly recommended that all hospices seek professional advice and review existing methods. It will also be sensible to have new methods agreed by HMRC.

How much will the refund scheme be worth?

Because there has been no need to track the information in the past, it isn't possible to give a precise figure for how much the refund scheme will be worth.

However, in their supporting papers for the budget, the Office for Budgetary Responsibility estimated the annual value of the refund at £25M.

This is roughly equivalent to a 10% increase in the level of statutory funding for hospices across the UK.

Will HMRC Be Issuing Any Official Guidance?

Office HMRC guidance on the refund scheme can be found at <https://www.gov.uk/guidance/vat-refund-scheme-for-charities-notice-1001>.

How do hospices claim the refund?

VAT registered hospices will claim the refund as part of the normal process of submitting their VAT returns.

Will Hospices Need to Register for VAT to benefit from the scheme?

No. Hospices who are not VAT registered can still claim the refund using a VAT 126 form. (Insert link: <https://www.gov.uk/government/publications/vat-claim-for-refund-by-local-authorities-and-similar-bodies-vat126>).

Where can I get more help?

For any general queries, please email finance@hospiceuk.org.

Additional more technical information can be found on this external site (Link: <http://vat-help.co.uk/hospiceguide/>). Please note that Hospice UK is not responsible for the content of external sites.