

Joint Tax CoE, HMRC and HMT VAT Meetings

These meetings are held bi-monthly or as often as required and the statement of purpose is to promote best practice and knowledge sharing within the Government Department (GD) sector in relation to CoE customer GDs – but where practicably possible, other GDs and executive agencies as well. The CoE works in partnership with HMRC and HMT on the impact of VAT changes and their applicability to the CoE.

At our joint meeting held on the **5th May** we discussed **Contracted-Out Heading 14 – IT/Digital resource/expertise** and the following principles were agreed in relation to the current HMRC COS14 guidance:

1. If the IT worker(s) are under the day to day control of the GD, then this is a supply of staff and VAT cannot be recovered; and
2. If the IT worker(s) are under the day to day control of the supplier, and the activities delivered meet COS14 criteria (contributing to the provision of a fully managed and serviced IT infrastructure or the related to bespoke software) then the VAT can be recovered.

Some good indicators of what ‘Day to day’ control means:

3. The GD exercises control over ‘what’ the IT worker has to do, specifying tasks and breaking this down into individual small stages similar as would be done by a GD manager for an employee;
4. The GD specifies ‘where’ the work has to be done;
5. The GD specifies ‘when’ the work has to be done - although general timelines are likely to be imposed on a IT project, will the IT worker be told ‘when’ to complete their work with the level of granularity that would perhaps be similar with a GD employee;
6. The GD can you move the IT worker to a different task within the IT engagement; and
7. The GD requires progress reports from the IT worker as part of the engagement

Agreed guidance on COS14 IT Resources can be found at [Annex A](#) and FAQs can be found at [Annex B](#).

If you have any questions on the above, please get in touch with your hub contact.

COS 14 Resources

What is supply of staff?

1. There are five identifiable categories with regards to supplies of staff and or, resource. They are:
 - a. Agency IT workers. Usually temporary IT workers used to supplement existing GD staff.
 - b. Individual IT workers/contractors supplied through specialist resource IT organisations such as Capita and who are engaged for their skills (usually IT) but who do specific tasks usually over a finite period of.
 - c. Supply of expert resources / contractors from either an IT company or G-Cloud. More often than not, the company will supply a number of experts to deliver digital projects or activities.
 - d. IT Consultants – these are used to provide the IT strategic oversight/direction for a department and could also be the expert IT resource or a contractor to complete the implementation recommended.
 - e. Self-employed individual – this will be entirely dependent on the work / nature of the supply being delivered to the GD.
2. At the last HMRC/HMT/CoE meeting on 3 March the following was agreed in relation to H14 resource:
 - a. **'Consultancy services** are recoverable if the activities delivered are within the scope of H14 as a whole and are not limited just to bespoke supplies or advice'; and
 - b. **'Digital expertise** procured from sources such as G-Cloud and where a company supplies a number of experts to deliver digital projects or activities would qualify for H14 recovery, as opposed to single contractors'.

3. Summary of VAT Treatment

- a. Agency workers - by the nature of their use, would not be recoverable because the workers are traditionally used to supplement existing staff over a short term basis and are under daily control and direction of the GD they are placed within. This is a supply of staff and not a service.
- b. Self-employed individuals - this will be entirely dependent on the work / nature of the supply being delivered. If the GD has day to day control over the individual and the engagement comprises of tasks that are similar to that of an employee, then this is a supply of staff for VAT purposes and VAT cannot be recovered.
- c. However, if the individual is delivering H14 activities, is not under the control of the GD and the deliverables fit in with H14 criteria as a whole then VAT can be recovered.
- d. Supply of expert resources from G-Cloud or company - if the IT worker(s) are under the control of the supplier and the deliverables are H14 activities then this would be recoverable. Examples include (not exhaustive):

- Providing IT support to the running of a fully managed end to end IT service.
- Delivering digital / agile projects
- Specifically carrying out the task of updating, maintaining or any other work with regards to the development or upkeep of bespoke software.
- Providing IT helpdesk support to Departmental staff on a certain system/s or software programmes as part of a fully managed IT supply /support of bespoke system.
- If the worker is engaged with providing some form of up skilling or training and this is clearly identified in the invoice/contract/work order then this aspect might be recoverable under H65 and not H14.

Example Cases

1. Individual person brought in as a contractor

An IT worker delivers a number of pieces of work, is part of the in-house IT team responsible for providing support within the GD and is under day to day control of the GD. The VAT cannot be recovered. See 3(b) above.

A slight variation on the above. The worker is not to be managed day to day by the GD but is responsible for work within an internal IT project for which they must report to and be evaluated / directed by the GD IT project office. The worker performs duties that are same as those of the existing in-house Civil Servant project team. VAT cannot be recovered as the individual is supplementing in-house expertise. See 3(b) above.

A worker works through their own personal service company delivering digital projects and is not under day to day control of the GD. The worker is engaged to deliver a 6 month project and can work either remotely or at the GD and does not have to deliver the work personally. The deliverables are H14 activities and so the VAT can be recovered. See 3 (c) above.

The worker is completing a specific set of deliverables and the work is in relation to a bespoke piece of software and/or a fully managed service. This software was built by another external contractor and the work undertaken is to maintain and rebuild/modify the software and system to meet the department's needs. The worker might report into the project office but this is to ensure that all aspects of the project are up to date and on track and not as an employee. The VAT can be recovered. See 3 (c) above.

2. Contractor managed by existing staff and known shortage of resource in given area

A worker delivers research and development work which was procured via G-Cloud and tasked with doing specific tasks including up skilling existing staff. Procurement Q&A refers to the worker as sitting alongside the GDs teams and/or contingent labour in the locations outlined in the requirements document. The same document also refers to the fact that the GD is in need of developers and user researchers. Not VAT recoverable because it is a supply of staff and the supply is unlikely to be H14 anyway. See 3 (b) above.

An agency or other intermediary is responsible for sourcing and supplying suitable candidates to the GD but the GD is responsible for the day to day management to achieve the agreed tasks/outcomes. VAT cannot be recovered – see 3 (a) above.

A worker is engaged via G-Cloud specifically to up-skill / train existing employees in IT. The worker is not under day to day control of the GD. Should the nature of the supply be seen as training and therefore recoverable under H65?

3. GD engages with external provider to supply staff with regards to an end to end supply of IT services – staff report to a project manager who is supplied by Company X

The GD uses G-Cloud to provide digital services. Company X is chosen and there are approx. 25 to 30 resources (individuals) working on digital projects at any given time with an on-site project manager supplied by Company X, to coordinate and manage the personnel and serve as link with the GD. Delivery is in the form of agile working comprising fast delivery of a range of products and processes that have essentially been digitised. The digital work is an integral part of the Department IT strategy and forms part of the end to end supply of IT services. The VAT can be recovered because activities would qualify for H14. And this example is very similar to the scenario agreed in 2 (b) above.

4. As Above but staff report directly to Department Staff

Similar to the above, but this time the GD goes to Capita and Capita facilitates 25 to 30 individuals working for the GD. Day to day control of the individuals rests with the GD. But all delivery is again, in the form of agile working comprising fast delivery of a range of products and processes that have essentially been digitised. The digital work is an integral part of the GD IT strategy and forms part of the end to end supply of IT services. The VAT cannot be recovered because whilst activities may be H14 type activities, the day to day control of the individual(s) rests with the GD. See 3 (a) above.

Frequently Asked Questions:**COS14 – IT specific supplies of resource e.g. IT consultants, software developers, helpdesk support staff****Contents**

1. Background	5
2. Basic Principles of COS Heading 14 for supplies of IT resource/IT workers	5
3. Frequently Asked Questions	6
3.1 What does ‘day to day’ control of a worker mean?.....	6
3.2 What is a supply of staff?	6
3.3 What about the supply of multiple IT workers via GCloud or several suppliers?.....	7
4. Case examples	7
5. Further Information	8

1. Background

Heading 14 of the HM Treasury (“HMT”) Direction on Contracted-Out Services (“COS”) allows for VAT reclaims by Government Departments and their Executive Agencies (GDs) on the supply of: **“Computer services supplied to the specification of the recipient”**

This heading as at May 2016, is currently under review from HMT although the resources element of the heading is not expected to change. Note: Non IT Consultancy advice that is for strategy, organisational, planning or similar type activities is not recoverable under COS14 and may, subject to meeting the qualifying criteria, be recovered under COS52.

There are some generic points outlined below followed by a FAQ section which should hopefully point you in the right direction. If the answer to your question is not obvious from this guide please contact your VAT Liaison Officer who can liaise further with the Tax CoE / HMRC. Please note that particular care should still be taken when reviewing VAT recovery in this area as it can be complex, open to interpretation and IT subject to continuous change.

2. Basic Principles of COS Heading 14 for supplies of IT resource/IT workers

It may be possible to recover VAT on the supplies of IT resource or IT workers delivering work to the GD providing the work they are doing meets the criteria of COS14. Examples of this work include:

- Designing of bespoke software and/or systems support, digital agile projects, maintenance or upgrading of existing software.
- Consultancy, research and development of IT systems, software etc. used by the qualifying body.
- IT resources that are used by the GD in the delivery of existing fully managed IT system/services which the GD is able to recover VAT on. Note: the IT resources cannot

simply be used to supplement the existing in-house IT capability/expertise and if this is the case then VAT cannot be recovered.

In summary the principles to be applied are:

- If the individual IT workers are under the day to day control of the GD, then for VAT purposes this is a supply of staff and the VAT cannot be recovered.
- If the individual IT workers are under the day to day control of the IT supplier who has been contracted by the GD to provide the IT service, and the work delivered meets COS14 criteria (i.e. contributing to the provision of a fully managed and serviced IT infrastructure or related to bespoke software) then the VAT can be recovered.

3. Frequently Asked Questions

3.1 What does 'day to day' control of a worker mean?

If the IT worker is under the day to day control of the GD (and not the supplier who the worker is engaged through) then this would be deemed to be a supply of staff and VAT cannot be recovered. The following indicators (not exhaustive) demonstrate day to day control:

- The GD exercises control over 'what' the IT worker has to do, specifying tasks and breaking this down into individual small stages similar as would be done by a GD manager for an employee;
- The GD specifies 'where' the work has to be done;
- The GD specifies 'when' the work has to be done - although general timelines are likely to be imposed on a IT project, will the IT worker be told 'when' to complete their work with the level of granularity that would perhaps be similar with a GD employee;
- The GD can move the IT worker to a different task within the IT engagement;
- The GD requires progress reports from the IT worker as part of the engagement.

Just because a supply of IT workers might meet one of the above bullets it does not mean that the supply is not VAT recoverable (as a supply of staff). Each case would need to be reviewed on its own individual merits to assess where the balance of control lies - with the supplier or the GD. This could involve looking not only at the contract but also the work order and any other correspondence to do with the supply.

3.2 What is a supply of staff?

The following categories have been identified with regards to supplies of IT resource/IT workers.

Category	VAT Treatment
Agency IT workers. Usually temporary IT workers used to supplement existing GD staff	Not recoverable
Individual IT workers/contractors supplied through specialist resource IT organisations such as Capita and who are engaged for their skills (usually IT) but who do specific tasks usually over a finite period of time.	Not recoverable

Supply of expert resources / contractors from either an IT company or G-Cloud. More often than not, the company will supply a number of experts to deliver digital projects or activities.	VAT recoverable if the work is COS14 activity and day to day control rests with the IT company and not the GD.
IT Consultants – these are used to provide the IT strategic oversight/direction for a department and could also be the expert IT resource or a contractor to complete the implementation recommended.	VAT recoverable if the work is COS14 activity and day to day control rests with the IT company and not the GD.
Self-employed individual – this will be entirely dependent on the work / nature of the supply being delivered to the GD.	VAT recoverable if the work is COS14 activity and the GD does not have day to day control.

3.3 What about the supply of multiple IT workers via GCloud or several suppliers?

Supplies of expert IT resources from G-Cloud or an IT company will be VAT recoverable providing the IT workers are under day to day control of the IT supplier engaged to deliver the work and not the GD and the deliverables are COS14 activities. Examples include (not exhaustive):

- a) Providing IT support to the running of a fully end to end managed IT service.
- b) Delivering digital / agile projects
- c) Specifically carrying out the task of updating, maintaining or any other work with regards to the development or upkeep of bespoke software.
- d) Providing IT helpdesk support to Departmental staff on a certain system/s or software programmes as part of a fully managed IT supply / support of bespoke software.
- e) If the worker is engaged with providing some form of up skilling or training and this is clearly identified in the invoice/contract/work order then this aspect might be recoverable under COS65 and not COS14.

4. Case examples

Example	VAT Treatment
An IT worker delivers a number of pieces of work, is part of the in-house IT team responsible for providing support within the GD and is under day to day control of the GD.	VAT cannot be recovered because the worker is under day to day control of the GD
A slight variation on the above. The worker is not to be managed day to day by the GD but is responsible for work within an internal IT project for which they must report to and be evaluated / directed by the GD IT project office. The worker performs duties that are same as those of the existing in-house Civil Servant project team.	VAT cannot be recovered because the individual is supplementing in-house IT expertise

<p>A worker works through their own personal service company delivering digital projects and is not under day to day control of the GD. The worker is engaged to deliver a 6 month project and can work either remotely or at the GD and does not have to deliver the work personally.</p>	<p>The deliverables are COS14 activities and so the VAT can be recovered</p>
<p>The worker is completing a specific set of deliverables and the work is in relation to a bespoke piece of software or/and a fully managed service. This software was built by another external contractor and the work undertaken is to maintain and rebuild/modify the software and system to meet the department's needs. The worker might report into the project office but this is to ensure that all aspects of the project are up to date and on track and not as an employee.</p>	<p>The deliverables are COS14 activities and so the VAT can be recovered</p>
<p>The GD uses G-Cloud to provide digital services. Company X is chosen and there are approx. 25 to 30 resources (IT workers) working on digital projects at any given time with an on-site project manager supplied by Company X, to coordinate and manage the personnel and serve as link with the GD. Delivery is in the form of agile working comprising fast delivery of a range of products and processes that have essentially been digitised. The digital work is an integral part of the Department IT strategy and forms part of the end to end supply of IT services.</p>	<p>The VAT can be recovered because the deliverables are COS14 activities.</p>
<p>Similar to the above, but this time the GD goes to Capita and Capita facilitates 25 to 30 IT workers working for the GD. Day to day control of the IT workers rests with the GD. But all delivery is again, in the form of agile working comprising fast delivery of a range of products and processes that have essentially been digitised. The digital work is an integral part of the GD IT strategy and forms part of the end to end supply of IT services</p>	<p>The VAT cannot be recovered because whilst activities may be COS14 type activities, the day to day control of the individual(s) rests with the GD</p>

5. Further Information

The information contained in this guidance is a summary and therefore if you are unsure or require further advice we recommend you also read the HMRC Guidance to Government Departments, the COS headings in full and contact your VAT Liaison who can also consult with the Tax CoE / HMRC for additional advice.