

Subject: Contracted-out Services Heading 21

Meetings between HMRC, HMT and the Tax Centre of Excellence (CoE) are usually 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 and GDs.

At our joint meeting held on the 25th September we discussed the Contracted-Out Services (COS) Heading 21 – Estate Managed Services. The principles and guidance set out below have been agreed in relation to the current HMRC COS Heading 21 guidance.

What does the heading cover?

The HMRC COS Heading 21 guidance states *“This Heading covers property where a government department or health authority holds either the leasehold or the freehold or Scottish equivalent.”*

This means VAT cannot be recovered under Heading 21 **unless** the GD holds the head lease or freehold. Leases signed in the name of the Secretary of State for Communities and Local Government (DCLG) on behalf of the GD will meet with condition.

Irrespective of whether a GD holds the head lease or freehold, if a GD pays for Heading 21 supplies for another occupier i.e. a contractor, VAT recovery is not allowed under COS. However, where the GD is a major occupier under a MOTO arrangement and incurs H21 costs on behalf of a minor occupier VAT recovery is allowed. Further guidance on MOTO’s can be found in the Government Departments VAT guidance produced by HMRC.

The following examples and VAT treatment have been agreed:

1. **Supply Chain / Operational Management Services** – a GD engages a supplier to practically and strategically manage the estates supply chain on the GD’s behalf undertaking the day to day operational management. This includes administering the performance management system as well as overall estates coordination and management, including provision of a help desk, work order management system and information and management reporting systems. This supplier is likely to be the first appointed member of the new GD estates supply chain who will then assist the GD in procuring the remainder of the GD estates supply chain. Detailed delivery objectives include:
 - To establish and deliver a system that will manage work orders associated with the GD estate and provide information and other management reports. The system shall be capable of integrating and/or interfacing with other related systems including but not limited to those of the other GD estates supply chain providers.
 - To deliver management tasks associated with the GD estate on the behalf of GD.
 - To offer a seamless, integrated service, easily accessible by all GD colleagues.

- Manage, motivate / coach and drive satisfactory levels of performance as a minimum from the GD estates supply chain and over time add demonstrable value to GD.
- To enable the delivery of the declared transformational objectives and continue to deliver value for money throughout the contract term.
- To offer flexibility of deployment, including a greater ability to swap-out under performing aspects of the supply chain if required, (as a last resort), and enable the delivery of the GD vision, (including but not limited to extended operating hours, digital transformation and SMART working).
- Enable a potential future state where the Government Property Unit, (or other Government entities), may provide some or all integration type services across the entire Government estate.
- Ensure and provide assurance of the GD's and the GD estates supply chain compliance with all statutory, regulatory and any relevant GD policies, processes and standards and ensure GD's exposure to risk is fully evaluated and proactively managed by the Integrator through the contract duration.
- All systems, design, processes and ways of working, procedures and service models created and undertaken by the Integrator in performing the Statement of Requirements shall be wholly owned, royalty free by GD.

VAT treatment

VAT can be recovered under COS Heading 21

2. **Facilities Management Services** – the GD engages a supplier to supply facilities management services to cover the provision of all site based office and accommodation type services required to run an estate including:
 - Overall building management: customer service centre, health and safety, churn, signage, space planning.
 - Building maintenance: structure of building, water systems, heating systems, ventilation and air-conditioning, drainage, electrics, lifts, keys and locks.
 - Equipment maintenance: desks, chairs, fans, cabinets, clocks, testing of portable appliances.
 - Landscape maintenance: walkways and access routes, grass cutting, borders.
 - Internal & external cleaning / periodic cleaning: Windows, drains, gutters, car parks, toilets, desks etc.
 - Waste management: collection, disposal, recycling
 - Catering & Catering Facilities and Equipment
 - Security & Reception

VAT treatment

VAT can be recovered under COS Heading 21

3. **Prison and Courts Estates** - there are four contracts covering geographical areas of the prisons and courts estate and the contracts broadly cover the works that were previously delivered in-house by the prisons works departments, stores or domestic cleaners and other contracted out FM services. The scope of services being delivered include:
 - Planned Preventative Maintenance
 - Reactive Repairs and Maintenance
 - Additional Works (Minor non-structural projects)

- Prison stores Management
- Waste Collection and Disposal – clinical, food and other waste
- Energy Management – this is not utilities/fuel but is advice on optimum management & efficiency
- Cleaning – prison and non-prisoner cleaned areas
- Prison and courts grounds Maintenance
- Maintenance of Health and Safety and Fire Safety Equipment

VAT treatment

VAT can be recovered under COS Heading 21

4. **Lease and landlord management services** – a GD engages a supplier to provide services comprising: lease and transaction management, property advice, landlord management, rent and rate reviews and management of one off projects including for example, those tasks required under the LL&T Act 1954.

VAT treatment

VAT can be recovered under COS Heading 21.

5. **Commercial Activity Services (occupation, contract management, negotiations etc.)** – the GD engages suppliers to undertake lease and purchase negotiations. These negotiations are around the continued occupation of some of the existing premises as head leaseholder of freeholder and new premises the GD intends to occupy as head leaseholder of freeholder. As part of the contract the supplier carries out contract management and rationalisation of numerous regional and local contracts for service delivery across the whole estate including producing reports and recommendations to feed into the GD's estate strategy. The supplier conducts negotiations on the fitting out and general infrastructure involved in occupying new and old premises outside of the agreed exit activities from the existing estates PFI contract.

VAT treatment

VAT can be recovered under COS Heading 21 as the supplier is conducting lease and purchase negotiations on behalf of the GD and managing estates contracts.

6. **Estates Performance Services** – the supplier provides an independent, impartial and transparent view of the GD estates supply chain performance including adherence and compliance to statutory and contractual obligations, operational quality and standards, customer experience/satisfaction and overall cost efficiency.

VAT treatment

VAT can be recovered under COS Heading 21 as the services relate to managing the estates supply chain.

7. **GD Estates Management Delivery Services** - the supplier provides estate related advice and assesses the work streams currently established by the GD to determine whether they are adequate, resourced appropriately and have a clear linkage to the project objectives and identified key risks of PFI provider. The supplier undertakes quality assurance of work streams, setting up tracking of the identified issues and risks with the complexities visible and interdependencies managed. The supplier recommends success metrics to monitor progress by way of maintaining a dashboard. Including providing advice on estate roadmap and reporting.

VAT treatment

VAT can be recovered under COS Heading 52, provided the services received are for advice and recommendations. However, if the supplies received go beyond advice, for example, implementing the advice/recommendation given, then VAT cannot be recovered.

8. **Exit Activity Services** – the GD engages a supplier to provide a risk assessment and to propose a testing strategy in respect of the safe exit of a separate PFI estates contract the GD has with another supplier. Advice is also provided to the GD on next steps for detailed testing to be undertaken to identify potential savings, claw backs or negotiation levers for the GD to use as part of its exit programme.

The supplier is then engaged to implement the advice given i.e. executing elements of the estate rationalisation on the GDs behalf and managing those land disposal partners.

VAT treatment

VAT is not recoverable under COS Heading 21 because there is no management or operation of land or buildings, but rather other professional services that simply relate to property.

Instead, the first part of the example is a supply of professional advice and therefore VAT can be recovered under COS Heading 52, provided that is the extent of the contract.

However, the second part of the example then moves on to the supplier being engaged to handle the exit strategy and implement the advice already given. As a result, this part goes beyond COS Heading 52 and none of the VAT incurred can be recovered on the supply.

9. **Conveyancing / surveyor services** – The types of supplies received here include advice and guidance and the administrative work with regards to a sale and the lodging of paperwork with the land registry and any other relevant bodies to ensure the transfer is accurately recorded and the GD owns the estate legally. For example:
- The ‘buying’ GDs conveyancer is responsible for undertaking searches and carrying out due diligence e.g. searches which are designed to inform the buyer of any unknown factors that might have an impact on the transaction e.g. value or feasibility of entering into the contract.
 - The ‘selling’ GDs conveyancer is responsible for the legal drafting and acting as the liaison between the buyer and seller.
 - Chartered Surveyors - Provide the assurance around valuations and the standard of work regarding prospective premises - making recommendations to the GD to act upon.
 - Quantity Surveyors - Provide the assurance that the evaluations provided by potential landlords/suppliers and other providers of estates related infrastructure are accurate and meet the needs of GD. GD would then act on this advice and decide whether to accept the proposals

VAT treatment

Conveyancing or surveying services are not recoverable under COS Heading 21 because they are not services that actively manage the estate. Rather, they are services that might assist in altering the make-up of the estate – the buying or selling of properties.

Instead, conveyancing or surveying services should be recovered under COS Heading 52 as they are providing a professional opinion or recommendations so long as the services do not go beyond the provision of advice.

Note:

If conveyancing / surveying services received by a GD are in relation to an exempt land sale, VAT cannot be recovered.

Exceptionally, where a GD has agreed an appropriate funding restriction with HMT, a GD may also recover VAT on other non-criminal legal services that go beyond advisory.

10. **Payment Monitoring Services** - the supplier undertakes a review on a statistically representative sample of billing to verify contract compliance and to investigate whether the current payment processes are robust and the payments sampled are valid, appropriately evidenced and compliant.

VAT treatment

VAT cannot be recovered under COS Heading 21 as the services relate to contract compliance and payment monitoring.

But, if the contract was just in relation to the provision of advice on the efficiency of a department contract then the VAT can be recovered under COS Heading 52.

11. **Data Services** - The supplier provides data analysis, verifying the integrity of and identifying gaps in asset and operational data held by the GD.

VAT treatment

VAT cannot be recovered under COS Heading 21 as the supply is one of data analysis, albeit related to estates.

12. **Estate Optimisation Strategy Services** – the supplier develops an analytical tool to inform rationalisation of the GD estate and clearly evidence economic modelling and analysis capabilities on real estate and how the GD could benefit from this and estate profiling to support commercial decision making across the GD estate portfolio.

VAT treatment

VAT cannot be recovered under COS Heading 21 as the services appear to be the development of an analytical tool. The VAT cannot be recovered under COS Heading 14 either because the COS Heading 14 criteria would not be met.

Please note: Heading 21 is an area that HMRC will review as part of normal compliance activity with customers. Therefore, if you identify any issues when applying this guidance or identify any potential errors, please contact your Customer Compliance Manager (CCM) at HMRC in the first instance.

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