

## What are the practical implications for employment businesses of the latest update to the Nursing Agency Concession?

On 9 December 2021 and 22 March 2022, HMRC updated the terms of their Nursing Agency Concession, whereby employment businesses can choose to exempt nursing staff from VAT. Scott Harwood, VAT specialist, considers the practical implications of the update.

### What is the Nursing Agency Concession?

The supply of medical staff is, by default, subject to the standard rate of VAT. The Nursing Agency Concession allows recruitment businesses to elect to treat their supplies of nursing and nursing auxiliaries as exempt from VAT. This valuable relief ensures care providers buying in qualifying temporary staff are not burdened with additional VAT costs.

The terms of the concession are listed in HMRC VAT [Notice 701/57](#) Health professionals and pharmaceutical products [under para 6.6](#).

### What are the updates to HMRC's concession?

There have been three main changes to the terms of the concession.

1. The concession now explicitly excludes the use by umbrella companies when supplying an employment agency or an employment businesses.

We understand a number of umbrella companies had sought to rely on the concession to exempt their supplies to agencies to mitigate the effect of adding VAT into the supply chain. HMRC's clarification ensures their policy is now clear that the concession can only be utilised by an employment business as legally defined under the Employment Agencies Act 1973.

2. In their March update, HMRC added the following paragraph:

'The Court of Appeal recently confirmed in the case of First Alternative Staffing Ltd and another that the concession was only available prospectively. It also cannot apply where input tax is recovered by the supplier on related costs because that is not consistent with exemption.'

This codifies the known legal principle that concessions can only be applied prospectively. Whilst some traders may have been allowed retrospective use by HMRC in the past, the new public statement would appear to undermine the ability of HMRC officers to allow any historic application.

3. Lastly, HMRC have also amended their paragraph in respect to Care Quality Commission (CQC) registration in for agencies England:

'In England, with effect from 1 October 2010 (as a result of changes announced in the Health and Social Care Act 2008), it is no longer a legal requirement for employment businesses involved in the supply of nurses to be registered with the Care Quality Commission.'

It seems HMRC have now dropped their earlier condition that a qualifying employment business was (or required to be) CQC registered before October 2010. This is a practical measure given the difficulties of establishing if an agency would have been required to register under the CQC regulations in place over a decade ago.

### Practical application and examples

The use of umbrellas remains popular, and many have sought ways to minimise their VAT charges to agencies in order to remain competitive. The update provides more clarity and certainty around correct VAT treatment. The referenced case of First Alternative Staffing Ltd provides a strong indication that a positive election and record may need to be made to evidence use of the concession. Simply not charging VAT might no longer be sufficient. This is especially the case if any inputs have been claimed by the agency.

### Recommended next steps

If you are an umbrella company that has been relying on the terms of the nursing agency concession, you need to take action now to correct your VAT accounting.

If you are an employment business and receive supplies from umbrellas who apply the concession (or don't charge VAT), then relevant checks should be updated to mitigate any joint risk of HMRC review.

Lastly, use of the employment agency concession may now be limited to those business that have made, and can evidence, a positive election. It is our recommendation businesses make a note to that effect in their records, perhaps saving a copy of the HMRC guidance page that details the concession.

**This article covers the general application of the rules. If you have any unusual or specific scenarios that you would like to discuss, please contact [Scott Harwood](#).**

### To find out more please contact

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