



High Court Enforcement Officers Association Limited

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Updated recommendation to HCEOA members on VAT on High Court Enforcement Fees

As the Chairman's Report to the AGM on 20th May 2021 indicated, the High Court Enforcement Officers Association is now recommending that members alter their treatment of VAT on High Court Enforcement Fees.

This should be done as soon as is practical and at the latest with effect from 1st August 2021 as follows:

1. VAT registered creditors

Where your instructing creditor (and not their solicitor or agent) is VAT registered, VAT should be charged to that creditor and NO VAT should be charged to the debtor.

A VAT Invoice should be issued to the creditor and that VAT should be accounted for to HMRC in the usual way. Whether that VAT can be deducted from any proceeds due to the creditor (and therefore a receipted VAT Invoice issued with the balance proceeds) will depend on the HCE business's terms and conditions.

2. Non-VAT registered creditors

Where your instructing creditor is not VAT registered, the Association would recommend that a sum equivalent to VAT should be charged to the debtor, as at present and in-line with the draft 2020 guidance (please see copy attached) issued by MoJ.

No VAT Invoice should be issued (to either debtor or creditor) and that sum, to be treated as VAT, should be accounted for to HMRC in the usual way.

However, this position may alter on conclusion of the current court application. The Association will advise you if this is the case.

WHY HAS IT TAKEN SO LONG FOR THIS TO BE RESOLVED?

It has only been partially resolved even now and the Association has been trying to get the MoJ and HMRC to come to an agreement for the last seven years. HMRC advice was produced in April 2014, but this guidance didn't make sense, and it was then subsequently withdrawn by HMRC.

The published HMRC advice still currently refers to the pre-2004 position, which is unhelpful. The Association informed MoJ in 2014 that HCEOs would continue with the 2000 advice received from the VAT Policy Directorate whilst the position was clarified.

All we have received over the past 14 months is the draft guidance attached, which was never published, suggesting a two-tier system.

WHY IS THIS CHANGING NOW?

At a Case Management Conference held on 20th May, a joint submission by HMG lawyers and those representing both CIVEA and your Association was made on an application being made by Just Digital Marketplace Ltd.

After further legal analysis by Counsel and Her Majesty's Government lawyers at a Case Management Conference held on 20th May, it was agreed that the application of VAT on High Court Enforcement Fees under the Taking Control of Goods (Fees) Regulations 2014 should be that clarified and presented in the draft 2020 guidance provided by MoJ/HMRC, in respect of VAT registered creditors.

Whilst the current proceedings relate to a specific VAT registered creditor, our understanding is that it is likely to lead to a wider clarification of the rules, meaning that VAT should not be charged to the debtor where the creditor is VAT registered.

The position in respect of non-VAT registered creditors has not been clarified. We await further guidance, either in the current proceedings or via a clarification from MoJ on non-VAT registered creditors. In the Association's view, this should be accompanied by an appropriate amendment to the Fees Regulations.

DOES THIS MEAN THAT WE CAN EXPECT REFUND CLAIMS FOR VAT CHARGED TO DEBTORS SINCE 6TH APRIL 2014?

Members are advised to seek independent advice regarding how they should deal with any claims for a refund of VAT from debtors and the process for reclaiming VAT accounted for to HMRC.

The Association continues to press MoJ to provide further clarification and guidance for members.

ISN'T THIS TWO-TIER SYSTEM VERY UNFAIR?

Yes. That is why the Association has pressed for VAT on High Court Enforcement fees to be in some way zero rated. If the clarification decides that a sum equivalent to VAT should be charged to debtors where the creditor is not registered for VAT, that is unfair on the debtor. If it decides that VAT should be charged to all creditors, that is unfair on the non-VAT registered creditor.

HOW DO I FIND OUT WHAT HAPPENS NEXT?

The HCEOA will update members as and when we have more information or clarity from the MoJ/HMRC on this issue.

Issued by the Board of the High Court Enforcement Officers Association 7 June 2021

