

Are you looking for VAT relief on your supply of staff?

Summary of HMRC VAT concessions

20 May 2021

VAT relief for supply of staff

VAT relief for supply of staff is a complex area. This guide gives a summary of the key VAT issues and considerations for recruiters and employers in the private and public sector.

Key definitions

Supply of staff

You make a supply of staff when you provide another person or company with an individual, who is either contractually employed or otherwise engaged by you (for example, a contractor or company director) in return for a consideration.

The individual supplied would normally come under the day-to-day direction and control of the organisation you have supplied them to (the 'host'). Via recent case law precedents (see [VATHLT2085](#)), day-to-day control is taken to mean operational control as opposed to dictating how someone might perform certain tasks.

Operational control

Operational control means having oversight over when, where and what work the individual performs. For example, a doctor may be self-sufficient when it comes to treating patients, but they would be operationally controlled if the host organisation instructs them on working hours, what facility they should work from and what patients they should be treating.

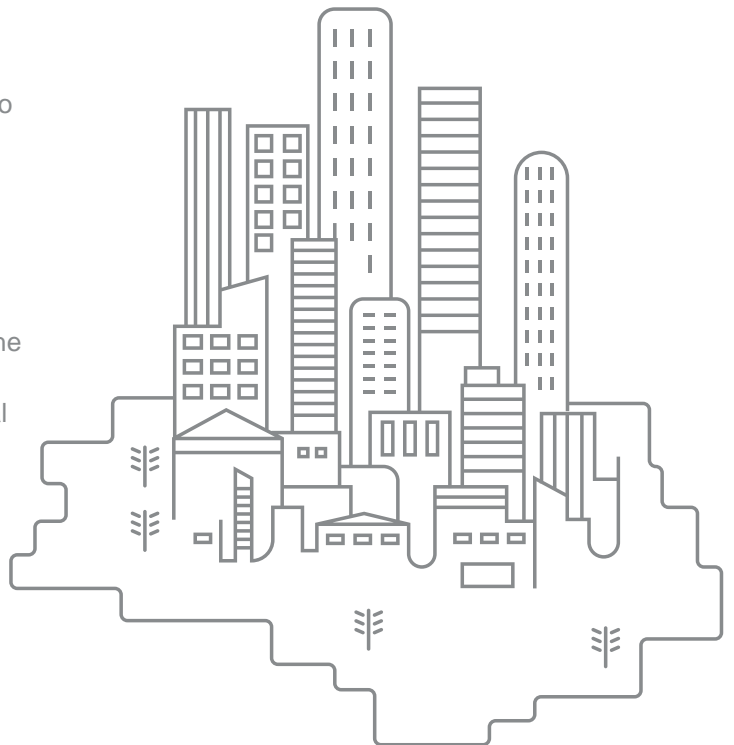
The supplies of staff can often look similar to labour intensive services. However, these may fall into one of the available VAT exemptions on the basis the contractor (supplier) maintains direction and control of the individual workers. Such service contracts are not for supplies of staff and are not specifically addressed in this article.

What is the general VAT position?

In general, any supply of staff for a consideration is subject to UK standard rated VAT where supply is in the UK. However, several exemptions and concessions exist which can be utilised to relieve the VAT burden. These are especially important when staff are supplied to organisations who cannot reclaim all their VAT costs.

Which sectors are impacted?

This often includes staff supplied to the health and care sectors, education, social housing, charities and non-profits, financial firms, and many public bodies.



VAT relief for supply of staff (continued)

What's the difference between exemptions, VAT concessions and outside the scope?

VAT exemptions have a mandatory legal footing. No VAT can be charged if an exemption applies. Any VAT costs incurred making an exempt supply are usually irrecoverable.

Concessions, on the other hand, are HMRC allowing the option to divert from the normal legal position. They are either formal or informal but must be evidenced as forming part of their public policy. Therefore, an individual HMRC letter addressed to a business cannot constitute a concession for other businesses to rely on.

It is important to note that both exemptions and concessions must be read and applied narrowly. For example, a trader cannot take the spirit of a concession and apply it to a slightly different scenario.

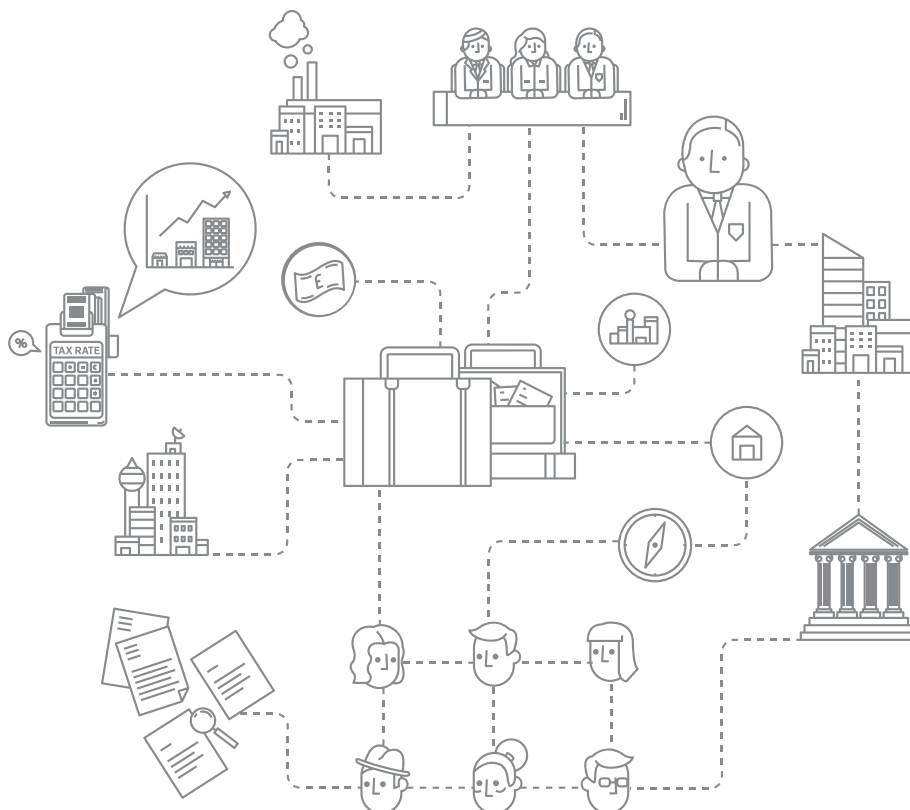
Supplies that are outside the scope of VAT results in no VAT being chargeable on the sale and figures excluded from the VAT return.

How do I apply a concession?

Subject to the terms of a specific concession, recent case law ([ref: Delta and 1st Alternative Medical](#)) indicates a trader should make a positive election. This might include recording formal minutes or agreeing the adopted status with HMRC.

Historically, HMRC has generally accepted that if the terms of the concession are met, and VAT was not charged, then the concession was applied. This was arguably irrespective if the concession was, or was not, purposefully considered.

It is also important to note that concessions cannot normally be applied retrospectively. For example, it is not uncommon for a customer to highlight to a supplier the existence of a concession and ask for VAT to be credited after the supply has occurred and been invoiced. In this situation it is unlikely that the concession can be used as it was not applied at the correct time.



Summary of staffing concessions and reliefs

Item	Source	Scope	Comments and general application*
1	VN700/34 para 3.1	Suspension of employment	Relief only applies when an employed individual disengages and takes on a new engagement with another employer. The original employer may remain responsible for the individual's payroll (see item 3) and disburses the salary costs to the new employer.
2	VN700/34 para 3.2	Joint employment	Entails one employer acting as a paymaster for a second employer where the individual is legally employed by both employers.
3	VN700/34 para 3.3	Disbursed payroll	Processing payroll for a third party's employees is a disbursement and outside the scope of VAT. Any fees charged for the services of processing the payroll is subject to VAT.
4	VN700/34 para 3.4	Office holders	As per item 1, this covers the scenario when an employee takes a formal office holder position with a third party, unconnected to your business.
5	VN700/34 para 4.2	Common directors	Similar to item 2, a company director may be entitled to payment from their companies with just one company nominated to operate the payroll. The disbursed payments are outside the scope of VAT as there's no supply between the companies.
6	VN700/34 para 4.3	Non-practicing directors	No supply for VAT occurs when a director is appointed by a related business under the terms of a legal agreement or contractual right; but does not give any expert advice or take an active role.
7	VN700/34 para 4.4	Personal appointments	Similar to item 4, when an individual arranges their own separate engagement with another employer, unrelated to your business, any disbursed payroll is outside the scope of VAT.
8	VN700/34 para 6.1/2	The secondment of staff 'Statement of Practice'	An employer can second staff without needing to charge VAT to the other host business so long as the host controls the individual, pays the individual direct and discharges the employer's tax and pension obligations. No financial gain (profit) can be made from the arrangement nor can the concession be used by employment businesses.
9	VN700/34 para 7	Placement of disabled workers under the Sheltered Placement Scheme	VAT is disregarded where sponsors of disabled workers place a worker with a host under the Sheltered Placement Scheme (or similar) so long as the host pays the individual direct and discharges the employer's tax and pension obligations.

Item	Source	Scope	Comments and general application*
10	VN700/34 para 2	Supplies between Government Departments with specialist knowledge	A rare circumstance and often one challenged by HMRC. Where one Government Department seconded staff to another, the supply is outside of the scope of VAT where that individual can only be sourced via the civil service due to the current government knowledge they hold. This relief does not apply to local government or other public bodies.
11	VN700/34 para 2	Supplies between National Health Bodies	This relief applies when staff are seconded between statutory NHS bodies in Scotland, England and Wales. It does not apply to General Practice or other providers of NHS funded services.
12	VN700/34 para 2	Supplies between and by local authorities	Supplies of staff made pursuant to a Special Legal Regime are taken out of the scope of VAT. Furthermore, the supply of services not made under a statutory obligation and not in competition with the private sector should be treated as non-business, but may be taxed if both parties agree.
13	VN701/57 para 6.6	The Nursing Agency Concession	Applicable for use by employment businesses only. It covers: - Nursing staff - Directly supervised nursing auxiliaries or - Nursing auxiliaries supplied directly to health institutions (see VN701/31). <i>Excludes: personal care assistants or those not providing medical care.</i> <i>Nb: The concession cannot be used by umbrellas where they are not an employment business.</i>
14	VN701/01 Para 5.7	Supplies between charities	Supplies of staff between charities and not-for-profits can be treated as outside the scope of VAT where the individual: - supports non-business activities for the employer and the host - the recharge is at or below cost
15	VTAXPER64 200	Catering contractors	Catering contractors can treat staff recharges as outside the scope where: - There is an agency contract - The catering staff serve a singular client - The wages are clearly identified
16	VTAXPER64 200	Clients of catering contractors	Staff supplied by the client to a catering contractor, provided for no identifiable charge, or in return for a reduced contract fee, can be treated as if no supply has occurred.
17	VATGPB886 0	Fire Services College	Fire authorities providing staff to the Fire Services College are taken out of the scope of VAT on the basis it is akin to a Special Legal Regime.

Item	Source	Scope	Comments and general application*
18	VATGPB886 0	Supplies between police authorities	Recharges of police officers, subject to a special legal regime, are taken out of the scope of VAT. HMRC agrees there is no distortion of competition.
19	VATGPB886 0	Agreements to release staff by local authorities	Similar to item 2, where teaching staff hold discreet contracts with their local authority and an examining board, any disbursed payroll processed by the local authority to the examining board is not a supply for VAT.
20	VATHLT2510	Dental staff	As agreed with the British Dental Association, supplies of staff between dentists, together with the use of dental facilities, can be classified as exempt from VAT
21	VATEDU536 00	Teaching staff	The supply of active teaching staff and teaching assistants between eligible bodies (schools etc) adopts the status of the education VAT exemption. It appears to be HMRC's current policy that the host can make non-business supplies of education.
22	VATEDU536 00	Student catering / accommodation staff	As per item 21, catering/accommodation staff between eligible bodies (schools etc) adopts the status of the education VAT exemption so long as the host is charging for their education.
23	VATGPB664 0	Staff supplied under pooled funds	The recharge of staff between the NHS and local government is not treated as a supply for VAT where made under an agreement subject to NHS Act 2006 s75 (2a) i.e. a formal pooled fund arrangement.
24	CSE3000	Cost Sharing Exemption	A formalised cost sharing group can make supplies of staff to its members exempt from VAT so long as the cost sharing exemption conditions are met.
25	VN700/2	VAT Grouping	Supplies of staff between VAT group members are disregarded for VAT purposes.
26	MoU (not published by HMRC)	Joint staff of universities and NHS organisations	Staff engaged in both teaching and/or research as well as the delivery of patient care, who hold honorary contracts with their host, can be treated as if they were jointly employed with payroll recharges treated as outside the scope of VAT.
Withdrawn concessions			
27	VTAXPER67 050	Staff Hire Concession	Withdrawn with effect from 01 April 2009. The concession previously permitted employment businesses to account for VAT on their margin / commission element only.

Case law

There have been numerous tax tribunals regarding the supplies of staff. The vast majority have fallen in favour of HMRC and the legal VAT position is commonly regarded as settled and beyond dispute. Pertinent cases include:

Case	Released	Quick summary
1st Alternative Medical Staffing Ltd and Delta (not published)	2021	Staffing VAT concessions cannot be applied retroactively. A positive election should be made
Mainpay Ltd	2020	Economic reality can override contract wording - supplies of staff contracted as medical service
San Domenico Vetraria	2019	Common director recharges can be subject to VAT. HMRC have not updated their own policy to date
Medacy	2019	A balanced decision, but the evidence supported an insured medical services contract and not a supply of staff
Impact Contracting Solutions	2019	HMRC attacked the buying party in supply chain where there was suspected knowledge of VAT fraud down the chain. Litigation pending
Adecco	2017	The courts categorially confirmed VAT is due on staff when supplied as a principal - even if contracts refer to agency relationships
ELS Group Ltd	2015	Use of Staff Hire Concession cannot be applied retrospectively.
Olive Garden Catering Company Ltd	2015	Catering labour-only concession must solely act for the client.
Reed Employment Ltd	2013	The case covered the VAT treatment on nurses (only) up to 1995 i.e. supplies predating the Conduct Regs. The case did not change HMRC's extant policy.
Rapid Sequence	2013	Provision of medical locums was not a supply of medical services
Sally Moher	2012	Provision of the services of health professionals does not amount to provision of medical care for VAT purposes
Horizon College	2007	Supplies of teaching staff can be closely related to education

Summary

As can be seen from the above list, there is a wide array of reliefs and concessions that providers of staff can utilise. The two most commonly used concessions are HMRC's Statement of Practice (item 8) and the Nursing Agency Concession (item 13).

All the reliefs have strict conditions that must be complied with before they can be adopted. If the conditions of a concession or relief cannot be complied with then it is more likely than not that your supply will be subject to VAT.

Surprisingly, we still see some employment businesses only accounting for VAT on their commission only. The Staff Hire Concession was withdrawn in 2009 and cannot be relied upon; especially where an employment bureau is providing their services as a principal.

The above list only covers supplies of staff. It does not cover labour intensive service contracts nor other arrangements that may involve the placing of staff. For example, it may be feasible to act as an introducing agent and/or arrange for the host to directly engage the staff. Employment businesses should also be mindful of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('the Conduct Regs') which can mandate how employment businesses should contract with their customers.

Please note this guide is for general application and provides a high-level summary only. Further reference should be made to the relevant HMRC notice and/or advice sought from your professional adviser before applying any concession or VAT treatment.



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