Legal Aid Agency

Immigration and Asylum Key card 6

Value Added Tax (VAT)

Version	Issue date	Last review date	Owned by	Reviewed by
1.0	01/07/2024	01/07/2024	Contract Management & Assurance (CMA)	Contract Management & Assurance (CMA) & Service Development

Scope and purpose

This Key card is designed to bring together the key information from existing regulations, Contract terms or guidance, on this topic and act as an assistance tool to highlight and explain specific elements.

This document does not replace the need for providers to be aware and adhere to the underlying regulations, Contract terms or guidance.

Provider's responsibility to establish VAT status

You will need to be aware of your client's immigration status in order to know how to correctly treat the supply for VAT purposes and it remains your responsibility to establish the client's VAT status.

It is important to realise that we are setting out the LAA's general position (as agreed with HMRC) but if you need specific VAT advice in relation to a particular client, it is your responsibility to confirm the situation with HMRC and if necessary, retain the specific query you raised with HMRC and the response from HMRC on file.

Background and general principles on VAT

All funded services are supplied to the client so their VAT status must be considered in relation to the claimed costs for those services.

As set out in para 4.28 of the Costs Assessment Guidance:

"If an individual receives legal services for a non-business purpose, i.e. in their own personal capacity, for VAT purposes the services are deemed to have been provided where the individual belongs (VATA Section 7A and Schedule 4A, paragraph 16(2)(d)). UK VAT is therefore generally not chargeable where the services are provided to a client who is considered to reside overseas."

In the category of Immigration and Asylum, this can often cause confusion if that place of residence is unresolved.

Belonging in this context involves something more than physical presence alone. The country in which individuals have their usual or permanent place of residence can only reasonably be seen to be their country of origin unless and until they are granted the right to remain in the UK. If the client's asylum status is not yet determined (or has been determined and they have no leave to remain), HMRC's view is that, even though the client may be physically present in the UK, their place of residence can only be in the country from which they have originated (see para 4.28 of the Costs Assessment Guidance and Paragraph 3.8 of VAT Notice 741A).

Consequently, any legal services provided to asylum seekers (or others without a right to stay) whether for their asylum applications or in relation to other areas of law, are supplied to them in their country of origin. This places the service outside the scope of UK VAT.

For VAT purposes, individuals can only have one usual place of residence at any point in time and are normally resident in the country where they have set up home with their family and are in full time employment / education (for example, overseas forces personnel and students attending full-time degree courses at college / university). Individuals are not treated as belonging in a country that they are only visiting as a tourist, are on short term educational courses, or here only for medical treatment.

Once a person has been granted a right to stay VAT applies as normal.

This document does not constitute taxation advice and that providers should source their own financial advice or contact HMRC for any queries.

Application of VAT in Asylum and Immigration claims

VAT is only claimable on profit costs and counsel fees in Asylum and Immigration matters where the client has status or a right to remain in the UK at the point of instruction. Where a client does not have a right to remain at the point of instruction, then VAT cannot be claimed on associated profit costs and counsel fees.

However, in circumstances when the client is an overstayer HM Revenues & Customs (HMRC) guidance makes clear that once an individual has been granted leave or permission to remain in the UK then VAT applies and continues to apply even if the client subsequently loses their right / status by overstaying. In these circumstances, VAT would be claimable until such time as the issue is concluded including the time taken to go through any appeal process.

Where the client did not have status in the UK at the outset of the matter, for all work relating to regularising the clients' status in the UK, VAT would not be applicable whether it's a fixed fee or hourly rates, but for hourly rates matters not relating to the clients' right to remain in the UK, VAT would be applicable to work undertaken after the client was granted the right to remain in the UK.

Tax point and further work

As VAT should only apply from the point when leave is granted it cannot be backdated to the start of that matter.

This policy applies to all supplies of legal services in relation to an application to remain in the UK (including services relating to that application, or costs, after a judgment has been made) even if a final bill is rendered after the recipient has been granted the right to remain in the UK. Consequently, if work is conducted after determination, to close the file, VAT need not be apportioned. However, where other legal services are ongoing, VAT will

need to be apportioned for work conducted for such services after the immigration decision is made and the client's status is determined.

EU nationals

Since the UK left the EU on 31 January 2020, EU nationals have not had automatic resident status and so it may be necessary to check whether a client had resident status before the UK left the EU to determine the correct VAT position.

Exceptional circumstances

In exceptional circumstances, an individual will not have an identifiable country of origin. Such individuals are in effect stateless and should be treated for VAT purposes, as belonging in the UK.

Disbursements

One of the issues to consider is whether the supply is made to the provider, and subsumed in the onward supply of legal services, or made direct to the individual client. Disbursements claimed for services such as interpreter costs and expert reports may include VAT charged by those service providers as those services are being supplied to the Legal Aid Provider and are not made directly to the client.

If you have determined the client has no VAT status, you may claim the net amount only from the LAA, then claim the VAT you have paid to the interpreter or expert from HMRC via your quarterly VAT return. There is no issue with taking this approach, as long as you do not claim the VAT from the LAA and then again from HMRC.

Relevant guidance and legislation

Paragraph 3.8 of VAT Notice 741A:
https://www.gov.uk/guidance/vat-place-of-supply-of-services-notice-741a

Costs Assessment Guidance (CAG) – 4.28 to 4.34
https://assets.publishing.service.gov.uk/media/657825f2095987000d95de44/Costs_Assessment_Guidance_2018_-_Version_10-_Dec_2023_Clean.pdf