

Steen & Co.

Employment Solicitors



VAT on compromise and settlement agreements

A grumpy note!

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We act for both companies and employees in respect of compromise agreements and settlement agreements (but not at the same time on the same deal).

When acting for employees we submit an invoice according to the agreement terms. These almost always say something along the following lines

The Company will pay up to the sum of £X plus VAT as a contribution towards your legal costs incurred for advice received from the Adviser in respect of this Agreement. Payment will be made directly to the Adviser's firm upon receipt by the Company of a copy invoice addressed to you and marked payable by the Company for the appropriate amount, showing VAT separately

Note the requirement that the invoice be addressed to the employee but marked as payable by the company.

We provide such invoices but estimate that in about 10% of cases the company's accounts' department reject our invoice and ask that we supply another one addressed to the company. A recent email to that effect was as follows

Please could you re-issue your invoice for services to Mr and make it out to Limited please? Without the Company being shown as the invoiced party our Accounts Payable department cannot pay your invoice.

We understand that many accounts payable departments have been told to only pay invoices addressed to the company. So when this happens we explain what VAT law and their own agreements say. Many companies accept our explanation. Some however do not. This article will hopefully serve as ammunition in such disputes for this firm and others. It certainly would have been useful in the case of one software Company a couple of years ago who, despite their own compromise agreement stating that the invoice must be addressed to the employee insisted that they would not pay the invoice unless it was addressed to the company. The HR manager at that software company also rather bluntly said 'I don't know what your problem is as every other firm of solicitors sends us a VAT invoice addressed to us'. We found this last claim surprising.

Firstly what does HMRC say? Well a starting point is the guidance note "VATSC92100". It deals with 'payment of another party's legal costs'

It starts by saying what is and what is not within the scope of VAT and makes it clear that a transaction (such as a compromise agreement or settlement agreement) which 'obliges one

party to be responsible for the costs of the other relating to that transaction' is within the scope of VAT 'provided the transaction proceeds to completion'. This means that if the agreement is signed the solicitor's legal costs are subject to VAT.

However, the guidance goes on to say the following "the solicitor whose costs are to be paid should deliver a tax invoice to his own client....", and "**in no circumstances** may a tax invoice be issued by the client's solicitor to the paying party who is not in law entitled to receive an input tax credit as the services have not been rendered to him. The paying party should therefore receive a note of the other party's costs in such terms that the note cannot be mistaken for a tax invoice issued to the paying party".

It's worth reading the whole of VATSC92100 as we have only extracted a brief part of it.

It does say, however, that the employee's solicitor can not deliver what might be mistaken as a VAT invoice to the Company. That HR manager's claim that 'every other firm of solicitors does so' is therefore surprising and rather worrying.

If a firm of solicitors acts within the rules set out in VATSC92100 then it must deliver a proper invoice to its own customer. We take the view that it **can** provide an invoice to the company but as VATSC92100 says such an invoice cannot be mistaken for a tax invoice issued to the company.

Our practice when faced with the fairly regular occurrence of a company refusing to pay our invoice unless addressed to it is to do so but mark it clearly 'THIS IS NOT A VAT INVOICE'.

Those producing such invoices should also note that the general HMRC guidance on producing VAT invoices includes the following:

A VAT invoice must show:

- an invoice number which is unique and follows on from the number of the previous invoice - if you spoil or cancel a serially numbered invoice, you must keep it to show to a VAT officer at your next VAT inspection
- the seller's name or trading name, and address
- the seller's VAT registration number
- the invoice date
- the time of supply (also known as tax point) if this is different from the invoice date - see below
- the customer's name or trading name, and address
- a description sufficient to identify the goods or services supplied to the customer
- the rate of any cash discount
- the total amount of VAT charged expressed in sterling
- For each different type of item listed on the invoice, you must show:
 - the unit price or rate, excluding VAT
 - the quantity of goods or the extent of the services
 - the rate of VAT that applies to what's being sold
 - the total amount payable, excluding VAT

- If you issue a VAT invoice that includes zero-rated or exempt goods or services, you must:
- show clearly that there is no VAT payable on those goods or services
- show the total of those values separately

Many of those bullet points above are relevant. They include the requirement that the invoice shows 'the customer's name or trading name, and address'. Therefore even if a solicitors firm like ours has to produce an invoice in the name of the company paying the costs it must still include its customer's name and address. We have experience of companies rejecting even this leading to a bit of a standoff as we won't breach the law and they want an unacceptable VAT invoice. In all cases so far a stern letter to the CFO has unblocked the impasse but given that we are a firm of solicitors if we consider that the firm is claiming VAT back when it shouldn't (and given that that is the only reason it is demanding a VAT invoice in its own name) we will tell HMRC and we won't be a party to or assist in VAT fraud.

We said it was grumpy!

Best wishes

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