

During 2016, the SRA has issued for consultation its draft proposals for a change to the Accounts Rules that legal firms are required to follow. The key to the rules is client money and how regulated firms are required to treat, and account for, that money. The consultation period has now closed and we await the SRA's announcement of what the final rules will look like.

The SRA has sought to simplify the definitions and the rules. The old rules ran to 48 separate provisions, whereas the proposed new rules will only have 13. Whilst the basic principles behind the rules are the same, the protection of clients' money, the new rules will restrict the definition of client money to;

money held or received by you:-

- *relating to legal services delivered by you to a client, excluding payments for your fees and payments to third parties for which you are liable;*
- *on behalf of a third party in relation to legal services delivered by you (such as money held as agent, stakeholder or held to the sender's order);*
- *as a trustee or as the holder of a specified office or appointment, such as a donee of a power of attorney, Court of Protection deputy or trustee of an occupational pension scheme.*

As a result, the new rules would treat an advance payment of fees as office money whereas the old rules would have treated such a payment as client money until such time as the solicitor rendered a note of his fees for services rendered. This will simplify the solicitors' internal administration because it will no longer be necessary to transfer funds between client account and office account to settle fees, which the old rules stated must be done within 14 days thus providing probably the most frequently observed breach of the rules! The advance payment of disbursements, where the solicitor is responsible for discharging the disbursement (such as Counsels' Fees, for example) will also be treated as office money under the proposed new rules. However, disbursements that remain the responsibility of the client (such as Stamp Duty Land Tax) will continue to be treated as client money.

This will mean that solicitors will need to be quite clear as to what advance payments by clients actually cover.

The proposed new rules could give rise to a VAT issue, however. Section 6 of the VAT Act 1994 deals with the determination of the time when a supply of goods or services is to be treated as taking place. Under the old Accounts Rules, the solicitor would treat the invoice date as the tax point which is in accordance with section 6(4). It should be noted that section 6(4) also makes reference to the receipt of a payment. Under the old Accounts Rules, the payment by a client would have been paid into client account and so would not have been treated as a payment to the solicitor, because the client account does not belong to the solicitor. Under the proposed new Accounts Rules, if a client makes a payment in advance on account of fees, this will be paid into office account and could be caught by section 6(4) which reads;

*If, before the time applicable under subsection (2) or (3) above, the person making the supply issues a VAT invoice in respect of it or if, **before the time applicable under subsection (2)(a) or (b) or (3) above, he receives a payment in respect of it, the supply shall, to the extent covered by the invoice or payment, be treated as taking place at the time the invoice is issued or the payment is received.***

So, if a solicitor receives an advance payment of fees, it will be necessary to account for output VAT on the relevant proportion even though a VAT invoice has not been issued. It may be that best practice will mean that an invoice will be raised whenever a solicitor receives an advance payment in respect of fees, even though the services will not have been supplied at that point?

Find out more

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This is a general illustrative guide only and individual professional advice should be obtained on specific issues. Information is believed correct at time of publication.

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