

British Medical Association

VAT Implications of Primary Care Network Funding Structure

Lead Provider Model

Background

The practices signed up to the Directed Enhanced Service (DES) and involved in the Primary Care Network (PCN) will identify a lead practice. This practice will be the focal point for engaging additional workforce and entering additional contractual arrangements (if any) on behalf of the PCN. Service delivery will then flow to the network as a whole.

In relation to the workforce, the lead practice could employ the network staff and they will either be seconded out to practices as required or work across the network by reference to a clause establishing the necessary “place of work” as the network as a whole.

Funding under the DES will be provided directly to the relevant lead practice on behalf of the network to fund the employment costs.

The five roles to be funded by PCNs, in addition to a clinical director and administrative staff, are clinical pharmacists, social prescribing link workers, physiotherapists, physician associates and paramedics, phased over coming years.

VAT reliefs and exemptions

It is not envisaged that staff employed by the lead practice to deliver the DES would have joint contracts of employment with all members of the PCN, however if they were to do so, any charges for the staff between the lead practice and member practices would be outside the scope of VAT.

Exemptions within VAT legislation

The provision of “medical care” services by a “registered health professional” is exempt from VAT. “Medical care” must have a therapeutic aim and the inclusion of any services within the meaning should be consistent with the objective of reducing the cost of healthcare. Medical services for a purpose other than protecting (including maintaining or restoring) human health, may not benefit from the exemption. “Registered health professional” includes GPs, physiotherapists, paramedics and pharmacists.

In addition, medical care services which are wholly performed or directly supervised by a GP, physiotherapist, paramedic or qualified nurse (amongst others) will also qualify for exemption from VAT. For the purposes of supplies provided by pharmacists, the exemption only extends to the services where wholly performed by a registered pharmacist, it does not include any services directly supervised by a pharmacist, which remain standard rated.

The supply of “welfare services” is exempt when provided by a state regulated private welfare institution. “Welfare services” are regulated services directly connected with the provision of care, instruction or treatment to promote the physical or mental welfare of sick, distressed or disabled. A state regulated private welfare institution is one which is regulated by the Care Quality Commission or similar body, which would include GP practices.

Supplies of staff

The provision of the services above are exempt from VAT, however the provision of staff is standard rated, even if those staff then undertake the exempt services within the recipient business.

There is often a fine line between whether the supply is one of services or staff and the contractual and commercial reality will need to be considered carefully when identifying the nature of the supply.

The essence of the supply of staff is that they are under the control and supervision of the recipient who determines what they are used to do. Therefore it will be a supply of staff where the recipient, by controlling the persons supplied, can control their activities and in doing so change the nature of the supply made.

Ancillary services

The majority of guidance on single and multiple supplies, and principal elements of single supplies, is derived from case law, with each practical example being based on its merits and facts.

HMRC would expect each case to be considered with regard to the customer's perception of what they are receiving, as well as the artificiality and economic reality of the supply. HMRC acknowledges that there may be a single supply where there are multiple elements with a single principal element and all other elements not being an aim in themselves but rather a better way of enjoying the principal supply. Alternatively, there may be more than one element to the supply, however they are so closely linked as to form a single indivisible economic supply which it would be artificial to split.

VAT treatment of funding

- The tax point (ie the point at which VAT is due) for continuous supplies of services is the earlier of the date payment is made and the invoice date;
- As such, care should be taken to ensure the correct payment date is identified where the funds are held by the lead practice or corporate vehicle which will also be making the supplies;
- If the money is held by the lead practice to be drawn down against future supplies at the lead practice's discretion, the funds are effectively held as a prepayment and a tax point will arise;
- However, where the funds are held on trust by the lead practice on behalf of the other practices, it should be clear that the other practices would be entitled to withdraw their funds at any time and spend them as they see fit without penalty;
- In effect, the monies are held by the lead practice for simplicity and administrative purposes rather than each practice holding its own funds which would be more challenging to administer to achieve the same outcome;
- At the point the monies become due or are committed towards a supply by the lead practice, there is a tax point for VAT purposes triggering a VAT accounting requirement on the supply to which the monies relate.

Practicalities of implementing

Nature of supplies

Where there are staff employed under joint contracts of employment, there is no supply by the lead practice and therefore no VAT implications arise. If there are to be supplies of staff under joint contracts of employment, any documentation between the lead practice and member practices will need to make it clear that payments made to the lead practice are reimbursement for employment costs, they are not consideration for a service which would be subject to VAT at the applicable rate.

Conversely, where joint contracts are not possible, care will need to be taken to ensure that the lead practice is contracted to provide medical care services or regulated welfare services, rather than staff. This will require the service to be delivered by and overseen by the lead practice, rather than the member practices having control and supervision of the staff and the ability to alter the nature of the supplies being made. We would expect any agreements between the lead practice and member practices to make reference to specific medical services being provided rather than provision of staff to fulfil specific roles. The commercial reality of the service provided would then need to support the contractual wording, therefore the lead practice would have control and supervision of the service delivered.

Where certain roles do not qualify for exemption as they are not providing medical care, for example the clinical director or other administrative staff, if they are a component part of the wider medical care, for the better enjoyment and delivery of that care and cannot easily be distinguished from that wider supply, then they will also benefit from the exemption.

Social prescribing may qualify for exemption as medical care directly supervised by a registered health professional or as a regulated service provided by a state regulated private welfare institution, however consideration will need to be given to the specific nature of the supply being made by the lead practice.

Holding of funds

Where the lead practice is holding the funding on behalf of the member practices, no VAT will be due where it is clear that the lead practice is holding those funds on trust and any member practice could withdraw its funds in full at any time.

Once restrictions are placed on those funds by the lead practice or commitments are made to spend those funds with the lead practice by the member practice, a tax point will occur which will require VAT to be accounted for at the applicable rate of the expected supply (which may be exempt or standard rated).

Whilst VAT will be due at the applicable rate on the full value of the supplies at some point, by paying the funding to the lead practice as an advance payment against future supplies will crystallise any VAT liability at that point. This in itself will not necessarily be an issue where the funding is held and VAT payment can be made from it. However, this may create an administrative burden should the services envisaged not be delivered or be altered and increases the risk that the VAT may be double counted at a later date when the supply is delivered.

As a result we would recommend any agreements make it clear whether the funding belongs to the lead practice or whether it is held in trust to ensure the correct timing of VAT payments is identified and monitored over the service delivery period.