

The Network Contract DES and VAT

Information note

Disclaimer: The following does not constitute tax advice and, if in any doubt, organisations should seek their own legal and financial advice on the potential tax implications of their own arrangements.

Summary

We anticipate that most 'supplies' to support the delivery of the Primary Care Network Contract DES (e.g. between members of a network or to a network from another organisation) will be of healthcare services. These supplies will generally be VAT exempt, meaning no VAT needs to be charged to anyone for these supplies.

The position will be more complicated and VAT is likely to be chargeable when, for example (this is not an exhaustive list):

- 1) a member of staff is provided by one organisation to another (e.g. a secondment), as opposed to providing the services of a member of staff¹; and,
- 2) the services being provided are not considered to qualify as health services (see below).

If an organisation is not VAT-registered, because (broadly) their total VAT-able supplies do not exceed £85,000 in the prior twelve months (the current threshold), then they do not need to charge VAT.

If a network nominates a practice or GP federation holding a primary care contract to receive Network Contract DES payments, and other network practices employ staff which are reimbursed by the Network Contract DES, provided the network agreement is clear that the nominated fund-holder receives and holds fees from the commissioner 'on trust' as a disclosed agent (ring-fenced on receipt) for those employers, the payment of those fees by the fund-holder to the employing practices would not be subject to VAT.

The general principles of how VAT applies to supplies of health services and staff are set out below. Network members should consider whether VAT may apply in determining their local arrangements to deliver the Network Contract DES.

General principles of how VAT applies to supplies of health services and staff

VAT treatment of health services and staff

In general, the supply of **services** by health professionals are VAT exempt if the services meet two tests:

1. they are within the profession in which the person is registered to practise, and

¹ A secondment may be exempt where certain specific rules are satisfied relating to control and payment, and there is an HMRC concession for certain supplies of nursing staff.

2. they are for the protection, maintenance or restoration of a patient's health. (Services provided under GMS, PMS and APMS contracts explicitly satisfy this test.)

Should the above tests not be met, the provision of health services will still be exempt when either:

- a) the non-registered health professional provides health services and is directly supervised by an appropriately qualified and registered health professional; or,
- b) the non-registered health professional provides health services within a hospital or within another state-regulated institution providing healthcare (which would include a GP practice).

In general, the supply of **staff** (e.g. a secondment) is normally regarded as standard-rated for VAT (i.e. VAT will apply).

Provision of exempt and non-exempt services

If a supply of services includes some services that meet the tests set out above (and are therefore VAT exempt) and some that do not (and would therefore be VAT standard-rated), the whole supply could be considered a single composite supply and exempt from VAT in its entirety. The standard rated services would need to be ancillary to the main supply of exempt services; or it would need to be artificial to split the single supply into its components, with the single supply being predominantly of exempt services. This is not clear-cut.

Charging commission

If commission is charged by an entity holding funding for the exempt supply of services or staff, the commission is likely to be standard-rated for VAT as it would not be considered an exempt supply in its own right – the entity would effectively be providing an administrative service. Again, the commission could be deemed part of a single 'composite supply' (which would be exempt from VAT in its entirety) if it is ancillary to the main supply of exempt services or artificial to distinguish from the overall supply which is predominantly of exempt services.

VAT registration

An organisation needs to register for VAT and start charging VAT once they make more than a certain amount of VAT-able supplies. The threshold is currently set at £85,000. When calculating whether the threshold is reached, the organisation needs to look at their supplies in the past twelve months and, separately, their expected supplies in the next 30 days. If the threshold is not met, the organisation is not required to register (and therefore charge) VAT. If an organisation is VAT-registered, it may recover VAT paid on supplies (of goods, services or staff) that are used in making its own non-exempt supplies.

Other points

Failure to account for VAT can give rise to penalties and interest.

If a contract for a supply is silent on VAT, this is deemed to mean the price is inclusive of any VAT. The supplier then must account for VAT from the actual consideration (i.e. payment) received.