

**CIPFA VAT Committee
Notification of Technical Query to HMRC**

Subject	Secondment of Staff – Joint Healthcare Working
Author(s)	Mike Revis – Chair – CIPFA VAT Committee (Coventry City Council)

Type of authority affected
All public bodies.
<p>Description of the issue</p> <ul style="list-style-type: none"> • Who is involved, ie supplier, recipient or third party • What is being supplied, ie the type of goods or services • Why the supply is taking place and why each party is involved • When the supply is due to take place • Where the supply is due to take place
<p>The government and in particular the Department of Health and Social Care (DHSC) is keen to promote joint working between the NHS and local authorities. A number of legislative provisions allow for this. The NHS Act 2006 permits pooled budgets, lead commissioning of services and transfer of functions.</p> <p>One of the aims is to provide enhanced patient care and reduced hospital stays without increasing overall healthcare costs. It should be simple for all healthcare practitioners involved in caring for the same patient to share patient information, and pooling funding from NHS and local authority sources to allow for seamless care at areas of overlap between the current “silos” of hospital-based and community-based care.</p> <p>Prevention of hospital admissions is also key to reducing pressure and cost on NHS services so cost effective community services need to be put in place.</p> <p>There is only one government pool of money for all health services</p> <p>This paper seeks to extend the concession to allow <u>all</u> staff seconded between public bodies* and NHS bodies* to be treated as outside the scope of VAT. The ideal situation would be to treat all supplies of staff and <u>services</u> between public bodies and NHS bodies as outside the scope of VAT when made under joint healthcare initiatives.</p> <p>*We may need to give a narrower definition of public bodies but I am well aware that the fire service is also involved in some health initiatives. We may also need to define NHS bodies.</p> <p>The following link gives a very interesting overview of how the NHS is structured, how it works with partners (particularly local authorities) and the budgets involved:</p>

- <https://www.kingsfund.org.uk/audio-video/how-new-nhs-structured>

(view both slides)

Impact and extent of the issue

Far from working jointly, local authorities and NHS bodies all too often continue to find themselves divided, as they attempt to negotiate financial hurdles in order to avoid unwanted responsibilities – financial or otherwise.

While there are some concessions already in place on staff secondments between NHS bodies and local authorities, this covers only staff with specialist knowledge that cannot be obtained from the private sector, and intra NHS secondments.

The current situation is that local authorities can recover any VAT incurred on secondments of staff from NHS bodies. NHS bodies, however, cannot recover VAT incurred on secondment of staff from local authorities (unless under contracted out services).

The government is encouraging the devolution, delegation and integration of health and social care. In Greater Manchester a Strategic Health and Social Care Partnership has been created and is responsible for a budget of £6bn.

- [http://www.nhshistory.net/mou%20\(1\).pdf](http://www.nhshistory.net/mou%20(1).pdf)
- <http://www.gmhsc.org.uk/>

There are also similar schemes in London, Cornwall, Liverpool and the North East, albeit not on the same level as Greater Manchester.

Government department sponsoring the initiative, if any

By implication – DHSC

Funding

Cover what payments are involved, who the funds belong to and who is making and receiving payment. Also explain how the funds are viewed, ie grant, donation, gift or consideration etc

Ideally budgets should be combined to form one pool but this is not happening due to differing VAT regimes between the NHS and local authorities. This is leading to a major stumbling block in the total integration of healthcare budgets.

There is only one pool of money for health services, and by treating staff secondments of local authority staff to NHS bodies as taxable this means that the budget is being reduced to the benefit of the Treasury by way of irrecoverable VAT.

Legal powers used or relied upon

NHS Act 2006

Current VAT treatment

The current situation is that local authorities can recover any VAT incurred on

secondments of staff from NHS bodies. NHS bodies, however, cannot recover VAT incurred on secondment of staff from local authorities as there is no contracted out services heading that allows VAT to be reclaimed by the NHS on supplies of staff (except for supplies of nursing staff).

References in HMRC publications, including websites if any

The basic starting point is that a supply of staff which comes under the 'direction and control' of the recipient is taxable at the standard-rate of VAT. This means that if you make a member of staff available to work elsewhere, and the staff member is given work, instructions, etc by the recipient, this is a supply of staff. Taken from HMRC's Public Notice (700/34).

Tax analysis

Include reason for change and alternative liability proposed

The existing tax treatment is preventing true integration of health services as it generates irrecoverable VAT at the expense of the health budget. The suggested liability is to allow all staff seconded between public bodies and NHS bodies to be treated as outside the scope of VAT.

References in tax legislation supporting change

HMRC do grant concessions in respect of secondments of staff :

These include:

- secondments between and by government departments (technically, includes the NHS) which require specialist knowledge that cannot be obtained from the private sector
- secondments between national health bodies
- some secondments between local authorities and by local authorities where they have a statutory obligation or monopoly.

In addition, the following are also either outside the scope or exempt from VAT:

- supplies of nursing staff using the nursing agency concession (exempt)
- recharges of staff salaries under Section 75 of the NHS Act 2006 (pooled budget) arrangements (OS)
- supplies of certain staff to universities under a joint working memorandum (OS)
- supplies of staff to the prison service under similar memorandum arrangements (OS).

Excepted items: catering; secondary catering issues; catering staff wages concession

Where a catering contractor:

- acts as an agent of its client and not as a principal,
- pays the wages of its own staff who are employed solely to serve that particular client, and
- clearly identifies their wages in profit and loss accounts and/or invoices to that client

then the contractor may treat such wages as disbursements and need not charge VAT on them. VAT is chargeable on the management charge to the client.

Supplies of staff between charities

In some circumstances the income from the hire or loan of staff from one charity or voluntary organisation to another can be treated as non-business and outside the scope of VAT. This is subject to the following conditions:

- the employee has been engaged only in the non-business activities of the lending charity/organisation and is being seconded to assist in the non-business activities of the borrowing charity/organisation
- the payment for the supply of the employee's services does not exceed the employee's normal remuneration.

Supplies of nurses, nursing auxiliaries and care assistants by state regulated agencies (the nursing agencies' concession)

By an informal extra-statutory concession, nursing agencies (or employment businesses that provide nurses and midwives, as well as other health professionals) may exempt the supply of nursing staff and nursing auxiliaries supplied as a principal to a third party, if the supply is of:

- a person registered in the register of qualified nurses and midwives maintained under Article 5 of the Nursing and Midwifery Order 2001 providing medical care to the final patient
- an unregistered nursing auxiliary who is 'directly supervised' by one of the above
- an unregistered nursing auxiliary, whose services are supplied to a hospital (NHS or private), hospice, care home with nursing under Item 4 of Group 7, Schedule 9 of the VAT Act 1994 and form part of the care made to the patient.

A nursing auxiliary (also known as a healthcare assistant) is an individual who is not enrolled on any register of medical or health professionals but whose duties must include the provision of medical, as well as personal, care to patients.

The institution to which staff are supplied may be operated by a local authority, NHS body, charity or other organisation operating in the public or private sector.

Other supporting evidence

Date

31 January 2018