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Primary Care Networks

Guidance Note 5 – VAT & Funding Implications

This Guidance Note 5 explains the VAT and funding implications for each PCN model proposed by NHSE, and how to mitigate the risk of a VAT liability. We have also incorporated guidance in relation to one additional PCN model - the 'Hybrid model'- which is a hybrid between the Flat and Lead Practice models. Our 'Guidance on Structuring your Primary Care Network' sets out our recommended approach taking into account all of the benefits and risks of each model, including VAT.

WHAT IS THE ISSUE?

The fundamental issue as regards VAT, is whether the structure adopted could give rise to a supply of services on which VAT would be chargeable and then irrecoverable.

Whilst charges for a supply of services of medical care by a person enrolled in a relevant register are exempt from VAT, a supply of staff is a taxable supply. For this reason, whatever the role of the employee, there is still a risk VAT might apply.

FLAT PRACTICE

In a Flat Practice model the additional staff required for the PCN to operate are engaged under joint contracts of employment with each of the practices in the PCN. One practice within the PCN will be the nominated payee to receive the Core PCN Funding, which will be distributed for PCN activities to the practices accordingly.

As the staff are jointly employed, any payment made to those staff by any of the practices in the PCN cannot be regarded by HMRC as consideration for a supply of services from a VAT point of view, it is simply a payment of wages to an employee.

This model is therefore the joint safest with the Super Practice model from a VAT point of view.

LEAD PRACTICE

Under the Lead Practice model, one practice in the PCN (the 'Lead Practice') will employ the additional staff required. In order for the PCN to operate, the additional staff will be required to work across all practices in the PCN.

It is envisaged that the Lead Practice will receive the Core PCN Funding and may use this to pay the additional staff wages. Payment of staff wages can be sourced as the PCN wishes but it may also include practices' Network Participation Payments and other practice income. Our template schedules to the Network Agreement provide for these different options.

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Any payments made by the other practices in the PCN to the Lead Practice for payment of additional staff, particularly admin staff, could be considered by HMRC to be payments for a supply of staff, which would attract VAT. If the additional staff are paid out of Core PCN Funding only (and the contracts of employment require them to work across all practices) there is a lower risk of VAT applying.

If staff were seconded or sub-contracted by the Lead Practice to the other practices in the PCN, this could be viewed as such a supply of staff, which could give rise to VAT. It would therefore be better if the contracts of employment for the additional staff required them to work across all practices within a PCN.

The Lead Practice will be the recipient of the Core PCN Funding, and also of any contributions to the PCN required from the other practices. To mitigate the risks of a VAT charge arising, the schedules to the Network Agreement should make clear that the Core PCN Funding, and any contributions from the practices to the PCN, received by the Lead Practice, are held on trust for the benefit of the PCN to be used for the provision of medical care services to patients of the network practices. The Lead Practice should avoid sending invoices to network practices for any contributions to the PCN (as HMRC tends to equate invoices with a supply of services), and instead send requests for payment if it is necessary to document any transfer of funds from an accounting point of view.

In summary, if a PCN adopts the Lead Practice model, in order to mitigate the risks of a VAT charge arising, the PCN should:

- include wording in the additional staff contracts of employment requiring them to work across all practices in the PCN
- include wording in the schedules to the Network Agreement recording that the Core PCN Funding received by the Lead Practice and any contributions from the other practices are held on trust for the benefit of the PCN to be used for the provision of medical care services to patients of the network practices.

Whilst the use of only the Core PCN Funding for additional staff costs should significantly reduce the VAT risk, this should not be relied upon and, particularly when the PCN expands, may not always be practical.

Our template wording to be included in the schedules to the Network Agreement for PCNs adopting the Lead Practice model covers the above.

FEDERATION

Under the Federation model, a separate organisation (quite possibly a GP Federation) receives the Core PCN Funding and employs the additional staff. The staff will then need to work across all of the practices in the PCN. Under this mechanism, any contributions made to the

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organisation by the practices in the PCN are likely to be regarded by HMRC as consideration for a supply of services.

If the organisation does not hold a contract with NHSE for medical services, it seems likely that HMRC would be more sceptical that it is supplying medical services (outside the scope of VAT). That said, in VAT law there is nothing to prevent this to the extent it is providing medical services by people enrolled in the relevant registers.

Welfare services are also exempt when they are provided by a state regulated private welfare institution. This would include a GP practice, but might not necessarily include a federation or limited liability vehicle.

In order to avoid the supplies from a federation to the practices being regarded as a supply of staff then the Federation would need to oversee and deliver the medical services of the PCN.

The risk of a VAT liability could be mitigated by ensuring the wording of the sub-contract between the network practices and the Federation provides for all PCN funds to be held on trust by the Federation for the benefit of the PCN to be used for the provision of medical care services to the network practices. However, from a VAT point of view, this could be the highest risk option.

Our template wording for PCNs adopting the Federation model covers the above.

If the organisation could be set up as a Limited Liability Partnership (LLP) with the various practices as members, then the contributions could be regarded as partner capital (as opposed to taxable flows of money) from the LLP's member practices and outside the scope of VAT.

HYBRID

In a Hybrid model, one practice receives the Core PCN Funding on behalf of all network practices, but different practices within the PCN employ the additional staff, e.g. Practice A employs the Clinical Pharmacist, whilst Practice B employs the Social Prescribing Link Worker.

As with the Lead Practice model above, payment of staff wages may be sourced as decided on by the PCN but could come from the Core PCN Funding held by the nominated payee (distributed by the nominated payee to the practice employing the additional staff member) and/or practices' individual Network Participation Payments. The easiest approach would be to meet staff costs with the Core PCN Funding.

From a VAT point of view, the issue remains the same, i.e. whether Practice A's contribution is consideration for the supply of staff employed by Practice B and vice versa.

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Our recommendations in the section headed 'Lead Practice' above apply to the Hybrid model i.e. in order to mitigate the risks of a VAT charge arising, the PCN should:

- include wording in the additional staff contracts of employment requiring them to work across all practices in the PCN
- include wording in the schedules to the Network Agreement recording that the Core PCN Funding received by the nominated payee, and any contributions from the other practices, are held on trust for the benefit of the PCN to be used for the provision of medical care services to patients of the network practices.

Our template wording to be included in the schedules to the Network Agreement for PCNs adopting the Hybrid model covers the above.

SUPER PRACTICE

This is a single practice which can develop a PCN and as the sole employer of the additional staff no VAT issues should arise. From a VAT point of view it is therefore the joint safest alongside a Flat Practice model.

ALTERNATIVE STAFFING ARRANGEMENTS

We understand that some PCNs are considering engaging a third party body e.g. a local County Council, to provide the services of the Social Prescribing Link Worker to all practices in the PCN. In these circumstances, the same considerations above apply i.e. whether the payment to the County Council would be considered to be for a supply of staff and subject to VAT. There is a risk that HMRC would deem the payment to be for a supply of staff subject to VAT. However, to mitigate this risk, we recommend that the contract between the network practices and the County Council (or other third party) makes clear that the payment to the County Council is for the Social Prescribing Link Worker to provide medical care services to the network practices.

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