



HFMA briefing
April 2023



Working with local authorities

VAT implications

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Introduction

NHS bodies and local authorities have had legal powers and duties to work together for many years. The Health and Care Act 2022¹ provides the latest change that is intended to enable the smooth integration of health and social care for the benefit of patients and service users.

Examples of the relevant legislation include:

- section 75 of the Health Service Act 2006² *Arrangements between NHS bodies and local authorities* that allows NHS bodies and local authorities to work together to improve service provision
- section 113 of the Local Government Act 1972³ *Placing of staff of local authorities at disposal of other local authorities* that also allows local authorities to enter into agreements with NHS bodies for staff to work at those NHS bodies
- section 71 *Joint working and delegation arrangements* amends the 2006 Act in relation to NHS bodies and local authorities arranging for the exercise of their functions by other bodies, including pooled budgets.

In terms of VAT, local authorities and NHS bodies fall under different parts of the VAT Act 1994⁴ (VATA):

- local authorities fall under section 33 of VATA⁵ which means that they can recover all the VAT they incur that is attributable to their non-business activities as well as being subject to normal private sector VAT rules in relation to their business activities
- NHS bodies apply section 41 of VATA⁶ which means that, as a default position, they cannot recover VAT on their non-business activities⁷. They are able to reclaim some of this VAT when they have 'contracted out' to the private sector certain services that relate to these activities. The applicable services are listed in the HM Treasury contracted out services (COS) direction⁸. Section 41 bodies are also subject to normal private sector VAT rules in relation to their business activities.

These different rules mean that it is important to understand that the VAT implications of joint working arrangements need to be considered at an early stage when considering joint working between NHS bodies and local authorities.

There are three areas of joint working in-particular where VAT is currently a potential financial barrier to the efficient operation of the activities in question. These are considered below.

While every care had been taken in the preparation of this briefing, it is intended to highlight issues for consideration, it does not constitute VAT advice and organisations should not place reliance on it but should seek expert advice where necessary.

Employment issues

Joint working arrangements can sometimes have VAT implications, so the arrangement needs to be very clear. Legal and VAT advice may need to be taken. This briefing considers both secondments and joint contracts of employment. However, there may be other working arrangements in place across the sector and the same questions will need to be considered in those instances.

¹ Health and Care Act 2022

² National Health Service Act 2006

³ Local Government Act 1972

⁴ Value Added Tax Act 1994

⁵ HMRC, *Local authorities and similar bodies (VAT notice 749)*, last updated December 2020

⁶ HMRC, *VATHLT1040 - Introduction: NHS healthcare*, last updated May 2022

⁷ HMRC, *VATGPB9340 - Government departments and health authorities: VAT law: VAT recovery on non-business activities - HMRC internal manual - GOV.UK (www.gov.uk)*,

⁸ HMRC, *VATGPB9720 - Government departments and health bodies: contracted Out Services (COS) Headings introduction*, last updated November 2022

Secondments

A secondment arrangement changes the terms and conditions of an employee’s contract with their employer and effectively releases the staff member to work temporarily at another organisation. While the employee is managed on a day to day basis by the organisation they are seconded to, they remain employees of the organisation they are seconded from.

There does not seem to be a legal definition of a secondment although most legal firms provide high level guidance on their websites⁹. Useful guidance on the issues that should be considered, including a template agreement, has been produced by the Local Government Association¹⁰.

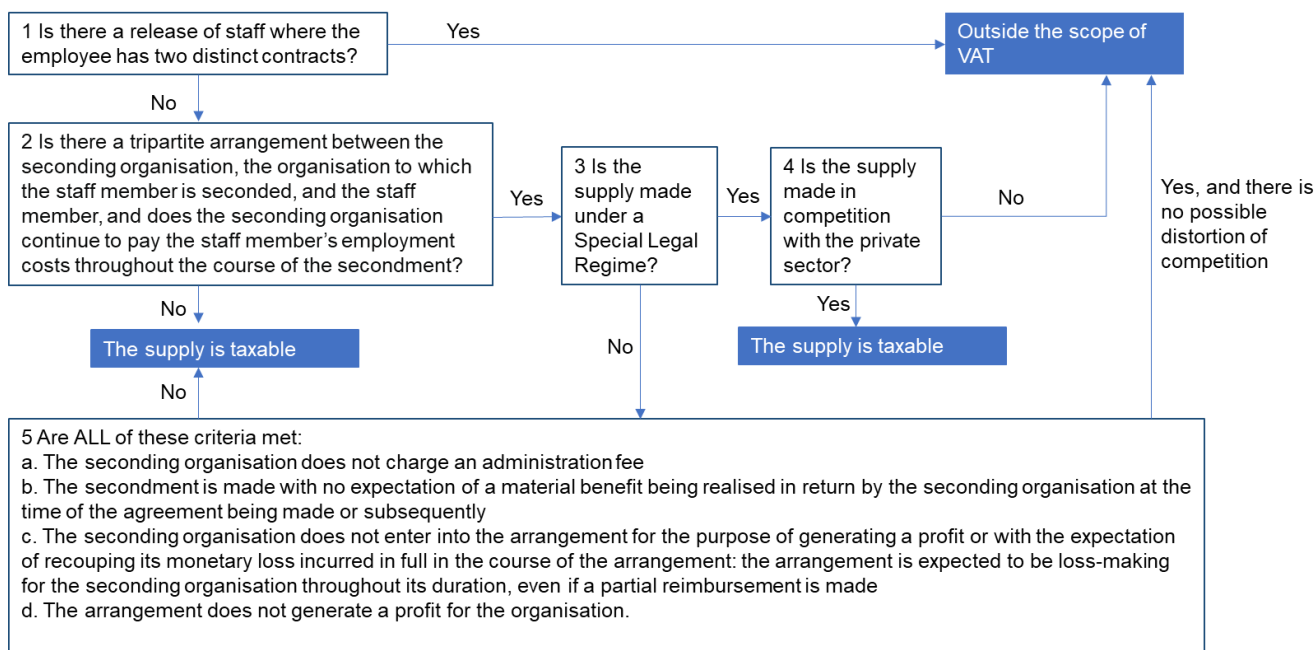
In VAT terms, making a member of staff available to work elsewhere on a secondment where that staff member is given work and instructions by the recipient body but is not employed by them is a supply of staff. The supply of staff that come under the ‘direction and control’ of the recipient body is taxable at the standard-rate.

HMRC’s VAT notice *Supply of staff and staff bureaux 700/34*¹¹ (VAT notice 700/34) sets out how and when VAT should be applied. HMRC’s guidance, *Other local authority activities: supplies of staff (VATGPB8860)*¹², includes a list of questions that local authorities need to consider when deciding whether the arrangement is a supply of staff – the questions are set out in the flowchart (**chart 1**) but reference should also be made to the original guidance.

As question 2 sets out, a tripartite agreement is a critical part of any agreement which is outside the scope of VAT. However, even with such an agreement, the arrangement in question may be taxable.

When considering a secondment, it is important that both sides understand the reason for it and it is clear it is for the benefit of the organisations and/ or the individual being seconded rather than for monetary benefit.

Chart 1: HMRC questions about whether the supply of staff is taxable



There are a few exceptions where supplies of staff are may be outside the scope of VAT – such as, where they are not made in the course or furtherance of business. These are listed in section 2.2 of VAT notice 700/34 and include:

⁹ Thomson Reuters, *Secondment*, 2022 or Davidson Morris, *Secondment agreement*, February 2020 or Net Lawman, *Secondment of employees: summary of the law*, August 2022

¹⁰ Local Government Association, *A guide to the law on secondments*, April 2020

¹¹ HMRC, *Supply of staff and staff bureaux (VAT notice 700/34)*, last updated December 2020

¹² HMRC, *VATGPB8860 - Other local authority activities: miscellaneous (N to Z): supplies of staff*, last updated December 2022

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

Supplies of nursing staff are exempt from VAT using the nursing agency concession (see section 6.6 of VAT notice *Health professionals and pharmaceutical products 701/57*¹³).

Joint appointments

Where staff are jointly employed by two or more organisations then this is not a supply of staff and the arrangement is outside the scope of VAT.

Section 3.2 of VAT notice 700/34 says that letters of appointment or contracts of employment should make it clear that there is more than one employer. The contract must specify who the employers are and list them.

There are other issues to consider when there is a joint appointment. Terms and conditions will need to be agreed by all the employer organisations as well as the employee. There are also practical considerations such as deciding which employer will provide payroll services, which pension scheme¹⁴ the employee will belong to and how the recharges will be made by the organisation providing payroll services to the other employer organisations.

Other helpful guidance on joint appointments includes:

- NHS Confederation *Joint appointments across the NHS and integrated care systems*, December 2021
- NHS, *HR framework for developing integrated care boards*, March 2022 (this is on the NHS Futures website so a login is required)
- The Scottish Government *The joint appointments guide 2014: an updated guide to setting up, managing and maintaining joint appointments between health organisations and local government in Scotland*.

Local authority partial exemption

Local authorities can recover an insignificant amount of input VAT which is directly attributable to their exempt business supplies. Insignificant is defined as the greater of £625 per month on average (£7,500 per annum) or 5% of the total input VAT incurred by the local authority. This is known as their partial exemption calculation.

Detailed guidance for local authorities is available in section 7 of VAT notice *Local authorities and similar bodies (VAT notice 749)*¹⁵. Guidance for those entities not using the special section 33 method, such as local authority wholly owned subsidiaries, is available in *Partial exemption (VAT notice 706)*¹⁶.

Any increase in the amount of exempt income received means that there is a risk that a local authority will breach their partial exemption threshold. If this happens, the authority will have to repay all the VAT it has recovered in relation to its exempt supplies during the financial year. The provision of healthcare by a local authority to NHS bodies is an exempt supply and there are numerous examples of where making these supplies can cause a VAT problem.

The issue tends to particularly arise in relation to services that are not clearly social care or healthcare but are preventative in nature. For example, diabetes services might be provided to care homes by a local authority rather than an NHS body. If the NHS pays for a contract for the local authority to provide these services, then it is an exempt supply but if the local authority were to

¹³ HMRC, *Health professionals and pharmaceutical products (VAT Notice 701/57)*, updated March 2022

¹⁴ Note: if an NHS employee is a member of a local authority pension scheme, this needs to be discussed with the financial reporting team. The accounting requirements for local authority schemes is different to the NHS pension scheme and early notice will be required as well as close working relationship with the pension scheme managers.

¹⁵ HMRC, *Local authorities and similar bodies (VAT notice 749)*, updated January 2023

¹⁶ HMRC, *Partial exemption (VAT notice 706)*, updated May 2022

provide the service anyway then it would be non-business in the books of the local authority and therefore outside of the scope of VAT.

Contracting arrangements

There can be further VAT complications when contracts are agreed, and/or healthcare commissioning involves entities that are outside of the NHS divisional VAT registration.

All NHS bodies are required to register for VAT and will have their own unique VAT number. They are also registered 'by division'. There are four NHS divisions for VAT purposes: England, Northern Ireland, Scotland and Wales. All NHS bodies are members of the division that they operate in, but it is worth noting that, in England, the DHSC, NHS Supply Chain, NHS Professionals and NHS Property Services Ltd are not part of the English division. GPs are not members of any of the NHS divisions.

Supplies between bodies within the divisional registration are outside the scope of UK VAT. However, where commissioned services are provided by a third party, even where that entity is an associated entity of the NHS (or a wholly owned subsidiary company of the NHS) then healthcare services provided back to the NHS will be exempt from VAT with the associated VAT recovery restrictions that arise as a result.

In essence, this was the problem with the UnitingCare Partnership (UCP) case – that the flow of funds moved outside of the NHS. Relevant reading on the UCP case includes:

- NHS England's review into the key facts and root causes of the termination of the contract¹⁷
- the NAO's investigation into the collapse of the UnitingCare Partnership contract¹⁸.

Careful consideration needs to be taken of the VAT implications of engaging with non-NHS providers of previously NHS provided healthcare.

The same applies in relation to the provision of public health services. This first arose as an area of concern when these services moved from the NHS to local authorities as a result of the Health and Social Care Act 2012¹⁹. The particular issue was around whether the services were provided under a special legal regime:

- if they were, then the services would be outside the scope of UK VAT as non-business
- if they were not, then the supplies would be exempt business supplies with the same VAT issues arising as outlined above.

This same issue was raised recently in the Northumbria Healthcare NHS Foundation Trust VAT Tribunal case²⁰. Although this case related to the car parking income received by the trust the principles of when services are supplied via a special legal regime are relevant in this case. The Cross Government Tax Centre of Excellence has prepared a summary of the case (login is required)²¹ is provided on the link below.

Conclusion

VAT is a complex area. Early consideration needs to be given to VAT when considering either closer working arrangements or agreeing formal contractual undertakings between the NHS and local authorities.

For further information and free advice please contact Tax.CoE@justice.gov.uk.

To submit an issue to the [HFMA VAT sub-committee](#), visit [Ask the committee](#)

¹⁷ NHS England, *NHS England review of UnitingCare contract*, April 2016

¹⁸ NAO, *Investigation into the collapse of the UnitingCare Partnership contract in Cambridgeshire and Peterborough*, July 2016

¹⁹ [Health and Social Care Act 2012](#)

²⁰ HM Courts and Tribunals Service, *Northumbria Healthcare NHS Foundation Trust v The Commissioners for HM Revenue and Customs*, October 2022

²¹ Tax Centre of Excellence, *Northumbria Summary*, 2022

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For nearly 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

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