



12.06.02

VAT ARRANGEMENTS FOR JOINT NHS/LOCAL AUTHORITY INITIATIVES INCLUDING DISABILITY EQUIPMENT STORES AND WELFARE – SECTION 31 HEALTH ACT 1999 (“SECTION 31”)

Introduction

- 1.1 The NHS Plan emphasises the importance of closer working between local authorities and the NHS to deliver a range of services, including community equipment services for older and disabled people. Section 31 of The Health Act 1999, has made closer working easier by allowing local authorities and NHS bodies to establish local partnerships. These partnerships, which may be structured in a number of ways, are intended to ensure that services are not duplicated and are delivered in the most efficient and cost effective way. Local partners in England and Wales, having agreed to use a Section 31 partnership arrangement, will need to notify their local NHS Regional Office (see www.doh.gov.uk/jointunit/index.htm for details). Following April 1 2002, Local Partners should notify their Strategic Health Authority.
- 1.2 This guidance, which has been developed jointly by Customs and Excise and the Department of Health, provides guidance on the VAT position of the different partnership arrangements. It applies specifically to the VAT arrangements for joint NHS/local authority partnership arrangements and replaces all earlier guidance on this subject. It is intended to be easy to apply within a range of different partnership arrangements, while recognising that the partners are governed by different VAT regimes. It includes within its scope the operation and management of joint stores, including the maintenance and repair of goods, and other shared supplies of services and goods. It is not intended to be used to avoid tax and EL(97)70, which outlaws tax avoidance within the NHS, continues to apply. The guidance is intended to support joint initiatives between the NHS and local authorities, allowing them to be entered into with a broadly neutral impact on VAT arrangements for all parties involved.

The VAT regimes

- 2.1 Local authorities and NHS bodies are governed by different VAT regimes.
 - Local authorities can reclaim from Customs most of the VAT they incur in performing their functions.

- NHS bodies are treated as Government departments for VAT purposes. This means that they are recompensed through their funding for any VAT that cannot be reclaimed, although they can reclaim from Customs VAT incurred on certain contracted out services. The relevant services can be found in the Treasury (Contracting Out) Directions dated 7 August 2000.

The partnership arrangements

3.1 Partnership arrangements may be established in 1 of 2 different ways these are:

- (a) The lead partner, called the lead body, is tasked by the other members of the partnership to carry out certain activities. In order to deliver these tasks the lead body receives funding from the other members. Whilst this funding may be ring-fenced, ie can only be spent on certain specified activities, to all intents and purposes the funding becomes the property of the lead body.
- (b) The lead body may be asked to act in an agency capacity for the other partners. In such cases the lead body would be managing funds and functions on the other parties', "principals"', behalf, in accordance with their instructions.¹

Partnership structure (a)

3.2 In this structure the VAT regime of the lead partner will determine the VAT recovery for the partnership

For example:

- where an NHS body is the lead partner any VAT incurred in the delivery of the programme can only be recovered to the extent that it relates to services mentioned in the contracting out directions, which are published by the Treasury under section 41(3) VAT Act 1994, currently September 2000. This of course only applies to that body's non-business activities.

¹ Arrangements for Care Trusts. Partnership structure (b) is the most suitable for Care Trusts, where the NHS acts as the agent for the local authority with respect to funds and functions formerly managed by social services. This structure may also apply to jointly managed services and functions. VAT may be apportioned by any reasonable method via an accounting document produced by the NHS lead partner, allowing the local authority to reclaim its share of VAT. This accounting document should be produced on a regular basis, we suggest quarterly, in order to minimise any impact on cash flow for the local authority partner(s) concerned.

- Where a local authority is the lead partner, any VAT incurred in the purchase of goods and services required to deliver the programme can be recovered under section 33 VAT Act 1994, where the supply has incurred tax and relates to its non-business activities for VAT purposes.

Partnership structure (b)

- 3.3 In this structure the lead body agrees to act as agent for the other members of the partnership, termed “principals”. Rather the lead body manages those funds on behalf of its principals.
- 3.4 Purchases of goods and services in such a relationship may be done in 1 of 2 ways.
- (i) the lead body may purchase goods and services on behalf of a principal. In such cases the lead body would ask for the bill to be sent directly to the principal for payment.
 - (ii) Alternatively, and more likely as the goods and services may be shared, the lead body would purchase goods and services in its own name and re-invoice the principals their share.
- 3.5 In (ii) above the agency rules set out in section 47 VAT Act 1994 would apply to the partnership arrangements. In simple terms this requires the lead body, once it has purchased goods or services in its own name, to re-invoice the principals their share of the charge. This would allow the principals to recover any VAT which may be incurred under their own particular VAT regime. Invoices should be in format given at Annexe A.
- 3.6 Further information regarding the VAT implications of acting as an agent can be found in Notice 700.

Goods and services which may be used jointly – including Jointly run stores and Community equipment services

- 4.1 Many partnership agreements will involve the running of joint community equipment stores or the sharing of equipment. Under such agreements where partnership structure (a) has been entered into the VAT status of the lead body will determine VAT recovery.
- 4.2 Where partnership structure (b) has been entered into, ie the lead body is acting as agent, the result will be different. Any VAT incurred in the management of the store itself, can only be recovered according to the lead body’s VAT status. However, any management charges made to the principals by the lead body will be standard rated. Any equipment purchased by the lead body as agent, on behalf of its principals, should be re-invoiced in one of the two ways mentioned at paragraph 3.4 above.**

- 4.3 Where goods and services are purchased which will be used jointly by the partners under partnership structure (b) any reasonable method can be used to determine the proportions of VAT recoverable by the different partners using available management information. A common-sense approach should be applied to apportioning costs in the borderline area between NHS and local authority provision.
- 4.4 Approaches could include proportions of actual or estimated costs at purchase or proportions of current or depreciated values of goods supplied to clients of services in support of NHS and local authority objectives over a particular period. Reclaim of VAT can be based on actual or estimated costs over a particular period, rather than the processing of individual invoices. VAT recovery is then adjusted at year-end to reflect actual values as necessary.

FURTHER QUESTIONS

- 5.1 Please direct any further questions you may have to Adrian Forward, H M Customs & Excise NHS Admin. Team, St Christopher House, Southwark Street, London SE1 0TE (Telephone 020 8929 2685; email Adrian.Forward@hmce.gsi.gov.uk) or Alcuin Edwards, Social Care Group, Department of Health, Wellington House, 133 Waterloo Road, London SE1 8UG (Telephone 020 7972 4122; email Alcuin.Edwards@doh.gsi.gov.uk).

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ANNEX A - Approved invoice for the purposes of paragraph 3.5.

From Ambridge NHS Trust
Business Support Directorate
Ambridge General Hospital
Oak Grove
AMBRIDGE AM2 1QQ

To Ambridge City Council
Ambridge City Hall
High Road
AMBRIDGE AM1 2QQ

In accordance with our agreed standing arrangements I confirm the following.

Actual non-pay expenditure on Partnership costs processed through accounting system of	Value	VAT	Total
Ambridge City Council	32333.34	5658.33	37991.67
Ambridge NHS Trust	39166.66	6658.33	45824.99
Other	1000.00	150.00	1150.00
TOTAL	72500.00	12466.66	84966.66

We have agreed in conjunction with Customs & Excise that because 57.1% of this VAT value (£7118.46) was incurred primarily to support local authority objectives it is refundable to Ambridge City Council under VAT Act 1994 Section 33 and is to be included on your next monthly VAT return. A full list of the transactions is available on request.

Any enquiries from H M Customs & Excise about this arrangement are to be directed to H M Customs & Excise, NHS Admin Team, Dorset House, London SE1 9PY (telephone 020 8929 2695).

Director of Finance
Ambridge NHS Trust