

## The Primary Care Network Contract DES and VAT

### Information note – (updated June 2019)

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NHS England and NHS Improvement



# The Primary Care Network Contract DES and VAT

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Prepared by: Primary Care Strategy and NHS Contracts Group

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## 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 for a charge (e.g. a secondment), as opposed to providing the services of a member of staff<sup>1</sup>; 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. We would suggest that any additional funding provided by members of the network is dealt with in the same way, so that the fund-holder receives and holds all the funding on behalf of the employers.

The VAT treatment of health services and staff is outlined below alongside information on the Additional Roles Reimbursement and general principles of how VAT applies to supplies of health services and staff. Network members should consider whether VAT may apply in determining their local arrangements to deliver the Network Contract DES.

### 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
2. they consist in the provision of medical care (i.e. 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.

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

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<sup>1</sup> 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.

## Additional Roles Reimbursement Scheme

The Additional Roles Reimbursement Scheme forms part of the Network Contract DES. The Network Contract DES is commissioned, inclusive of VAT (where applicable), as a variation to the core contract of participating GP practices

Whilst it is for individual GP practices and their corresponding networks to decide what works best for them, we would anticipate that the employment arrangements for the five staff, under the Additional Roles Reimbursement Scheme, would be structured broadly as follows:

- PCN have discretion on how they will engage the staff under the Additional Roles Reimbursement Scheme. This may include being employed by a [lead] GP Practice, or employed (or engaged as a self-employed contract) by a company formed between GP Practices such as a GP Federation or possibly a whole external organisation/body (which may or may not have charitable status).
- Assuming the staff employed under the Additional Roles Reimbursement Scheme are employed or engaged by someone other than that [lead] GP Practice such party would themselves be a party to the Network Agreement or be acting under a sub-contracting arrangement for the delivery of services undertaken by the staff covered under this Scheme.
- For clinical pharmacists, physiotherapists, physician associates and paramedics, regardless as to the contractual arrangements they would meet the two tests set out above.
- For social prescribing link workers, if their services form part of the overall services provided by the GP practices we anticipate they should fall within the exemption for health care, but where their services are separately supplied and charged for the social prescribing link worker would need to be 'directly supervised' by a GP<sup>2</sup> for the services to qualify for exemption. NHS England has provided guidance as to what this direct supervision would entail.

Whilst any particular Network may have subtle differences NHS England would in the circumstances detailed above *expect* the position to be as follows:

- Supplies would be made by each GP practice pursuant to the Network Contract DES to the [CCG] itself even though the funds were paid by the [CCG] to a single nominated payee (i.e. you ignore or look through the nominated payee for VAT purposes to the underlying GP practices);
- In the link worker scenario described above the relevant supply being made of the link worker's services would be exempt from VAT (in line with item 1 of Group 7 of Schedule 9 of the Value Added Tax Act 1994 and note 2 thereto).
- In the clinical pharmacist, physiotherapist, physician associate and paramedic scenario given above the relevant supplies made by these people would be exempt from VAT (in line with item 1 of Group 7 of Schedule 9 of the Value Added Tax Act 1994).

Although we anticipate the VAT treatment to follow the above analysis it is not straightforward. Practices should note that HM Revenue & Customs has not agreed the position described in this document and that they are the authority responsible for agreeing, administering and collecting VAT.

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<sup>2</sup> While supervision can be by 'an appropriately qualified and registered health professional', the Network Contract DES requires that this is a GP.

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

### *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.