



HFMA VAT Technical Sub-Committee

Minutes

Thursday 23 May 2019, 11:00 – 14:00
110 Rochester Row, Victoria, London, SW1P 1JP

Attendees

Anthony Robson	Gateshead Health NHS Foundation Trust (Chair)	
Senaka Attygalle	HMRC	Dial in
Mike Barlow	HMRC	
Daniel Bell	HMRC	
Martin Ginnelly	NHS Shared Business Services	
Paul Jones	Department of Health and Social Care	
Gareth Lewis	Aneurin Bevan University Health Board	
Richard Lodge	Founder member	
David Ogilvie	HMRC	
Rachel Owen	NHS England	
Lucy Parker	HFMA	
Debbie Paterson	HFMA	
Gita Raja	University College Hospitals NHS Foundation Trust	
Amanda Randall	Newcastle Upon Tyne Hospitals NHS Foundation Trust	
Steve Rourke	Gateshead Health NHS Foundation Trust	
Phil Simmons	Deloitte	

Business

1. Welcome and apologies

Lucy Parker and Di Roberts were welcomed to their first meeting.

Apologies were received from Michael Creaton, Stuart Grant, Michael John, Shelley St John (due to dial in difficulties), Michele Rapier, Di Roberts, David Smith and Sally Wilson

The application from Jane Wharton to join the committee was approved.

Action: HFMA to add Jane Wharton to the membership of the committee

For discussion and approval

2. Minutes of the last meeting

The minutes of the meeting on 24 January 2019 were approved.

3. Matters arising from meeting held on 24 January 2019

Section 41 review

Throughout the meeting reference was made to the review of section 41 of the VAT Act 1994. It is included in the minutes here to set the context.

The Chancellor announced the review in the [Spring Statement](#)¹, HM Treasury intend to publish the policy paper on VAT simplification during the forthcoming months. There may be an additional statement about the review in the Autumn Budget.

HM Treasury are keen to simplify s41 – an option being considered is a full refund scheme, other than for exempt input tax which cannot be refunded.

There was some discussion about how the planned simplification would be implemented in law, but it is too early to say. HMRC see merit in retaining s41 in an amended form, since it serves other purposes, rather than repeal it and introduce new legislation. However, drafting legislation is a matter for the Office of Parliamentary Counsel.

It was agreed that there is little that the committee can do now other than await the paper and agree a way forward once that has been published.

To assist with the review, HMRC asked for a data return to be completed by 15 April. David Ogilvie fed back to the committee that HM Treasury were pleased with the quality of the data that they had received. They can use this data with other accounts data that they have to profile expenditure and be able to undertake the necessary analysis. It is expected that the HM Treasury economists will work with HMRC economists on this.

There is no timescale for the report to be issued but work on it is in progress in HM Treasury.

Action: HFMA to add the s41 review to the agenda and the audit trail

3.1 NHS healthcare income via commercial entities

¹ Page 6 of the written ministerial statement says: '**VAT Simplification and the Public Sector** – A policy paper exploring a potential reform to VAT refund rules for central government, with the aim of reducing administrative burdens and improving public sector productivity.'

Paul Jones reported that it is relatively quiet at the moment. The issue should stay as a standing item on the agenda but there is unlikely to be any change.

There was some discussion about whether this is still an issue and whether NHS bodies are still seeking to maximise income using commercial subsidiaries. Rachel Owen and Paul Jones reported that things seem to have slowed down at the moment although, once the 2018/19 accounts are published, there are likely to be Freedom of Information requests to see what the position is.

One area where there is activity is around pathology labs which tend to be set up as LLPs. It may be that there will be some more activity around these labs as regional hubs are developed – either new entities or a rationalisation of the existing entities. Most of the overnight testing is now being done in large, centralised labs with NHS bodies having small on-site ‘hot’ labs for the urgent work.

The NHSI review process for new subsidiaries has gathered momentum and they have held several panels over the past few months. The review process plus the review of s41 might put the establishment of subsidiaries on the back burner for a while. The NHSI process seems to be focusing attention on the establishment of subsidiaries which are engaging with external bodies to generate income for the NHS.

3.2 Agency staff

David Ogilvie apologised that the guidance is delayed again. This is due to the s41 review (see any other business) which is in progress – the guidance has been parked until this is complete.

Action: DO to circulate the guidance on agency staff once it is published

3.3 COS heading 33 library services

Gareth Lewis said that Welsh bodies have issues regarding the interpretation of this COS heading. Gareth has been discussing this issue with Paul Jones at the DHSC. The issue is around the classification of the British Library and accessing information from them.

There was some discussion about whether this issue would be resolved as part of the s41 review. David Ogilvie noted that:

- The routine business of interpreting COS headings would carry on as any change to legislation is unlikely to be enacted until next year
- Individual enquiries will be dealt with by Mike Barlow and Daniel Bell.
- Paul Jones has been asked to look at this from the NHS perspective because the technology has progressed faster than the VAT rules.

One of the Welsh bodies is getting close to the four-year cut off so there is a risk that the VAT will not be recovered. In Wales, because of the way that the arrangement is set up, one organisation is acting as a hosted informatics service for all of Wales. Steve Rourke indicated that there are other bodies interested in this issue as a result of HMRC compliance reviews.

Gareth Lewis will liaise on the specific issues with Paul Jones and will pull together a briefing which summarises the issues. Martin Ginnelly reported that SBS did run a survey to assess the wider impact of this issue, but they had no responses. Steve Rourke suggested that one way to take it forward would be to categorise the types of supply from one-offs to subscriptions.

Action: GL and PJ to pull together a summary briefing on COS 33

3.4 VAT impact of lead provider framework (LPF)

Rachel Owen and Mike Barlow have been in touch, but the year-end accounts have taken precedence, so no progress has been made. LPF has gone quiet at the moment probably due to the number of mergers in the CCG sector.

The issue will remain on the agenda and be picked up by Rachel & Mike after the year-end accounts.

3.5 P22 Framework, in particular the impact on COS heading 35: VAT recovery associated with NHS capital investment projects

The progress of the small group looking at this issue was reported to the last meeting. Since then, Mike Barlow has discussed the issue with other stakeholders. However, once the review of s41 was announced, Mike suggested that the group's work should be paused until the review is complete.

It was agreed that the issue would remain on the agenda and will be picked up once the s41 review report has been issued as it may resolve some of the problems.

3.6 COS heading 14 – computer services supplied to the specification of the recipient

The tax centre of excellence (TCoE) have proposed a simplification to this heading. HM Treasury are considering the proposal and are now costing its impact using the non-recoverable data submitted to the s41 review. There was some debate about whether that information would provide enough detail on the different headings, but HM Treasury have said that they can use this information with other data to undertake the necessary costings.

3.7 Making Tax Digital

As subsidiary bodies are currently implementing making tax digital (MTD) there was some discussion about how it is going for them. For those NHS bodies using SBS there is 'middleware' in place to facilitate the implementation. It is important that where NHS bodies are using agents, it is the NHS body that retains responsibility for 'pressing the button' and submitting the claim. If the risk lies with the agent, then there are lots of controls that must be put in place first. NHS bodies do need to double check their system set up and the risks associated with it.

It is the smaller, less frequent, entries such as acquisition tax, which tend to be journaled into the accounts that are causing the issues. However, the soft-landing means that there is a year to get these issues right. There will need to be some changes to the ledger arrangements – organisations may need to have a new control account to ensure that the submission relates to the correct date.

For public bodies, the date for the release of the pilot was discussed. At this stage, HMRC don't have a date because they are waiting for clarification of what the deferment means. Mike Barlow is due to be told in May but there isn't much of May left now! Public bodies are not being allowed to early adopt MTD.

The committee are concerned that the implementation date in October is not far off now and there will need to be testing as soon as the data is released. HMRC assured the committee that they will tell the sector as soon as there is an update.

Action: MB to keep the committee informed of updates on MTD implementation

3.8 Legal fees

David Ogilvie wrote to the committee in February and the letter has now been circulated to the committee. Gareth Lewis noted that his Welsh colleagues were grateful for the response.

This item can now be taken off the agenda.

3.9 NHS adjusting for bad debt relief

Gareth Lewis apologised that he has not made progress with this action. He and Mike Barlow will pick it up outside of the meeting and email the committee with an update.

Action: GL and MB to email the committee with an update

3.10 Public health services

Rachel Owen is waiting for a response on this issue. Mike Barlow explained that it is all about the specific legal regime (SLR). He has another, similar, issue that he is looking at and he was hoping that the legal advice in that case would be useful in this situation. However, the information has not been provided by the legal team in the other case.

Mike Barlow will now take this issue forward without that information.

3.11 VAT liability on transactions between CCGs and GP Confederations

This item will be left on the agenda. Mike Barlow said that it is difficult to say anything specific about this issue without the contracts. It will be down to the contractual arrangements in place and precisely what is being supplied by whom and to whom.

Rachel Owen confirmed that the guidance in relation to the new policy announcements on primary care and GPs is clear that where there are VAT issues, NHS bodies should seek advice. So far, No one has approached HMRC for a clearance ruling. However, it is too early for that as there are no contracts in place yet, just the policy papers.

A few years ago, there was a flurry of arrangements where GPs and NHS trusts started working together. These are still happening – NHS trusts are taking over the management of GP practices in the first instance, but some are now providing GMS and PMS services. At least one trust has set up a subsidiary to hold GP contracts.

It is important that when these arrangements are set up, the corporate governance arrangements are considered. GPs will not want to be exposed to financial or legal risks. It can be difficult, when a service is at threat, to make sure that the paperwork and the governance arrangements are in order as the key consideration is to ensure continuity of service. However, it is important that the risks around funding and VAT are considered and managed.

Where primary care services are being provided by NHS bodies, HMRC should be approached for advice.

3.12 Implications of NHS Supply Chain leaving the English VAT divisional registration

This has happened and bills are now coming in with VAT on them.

Paul Jones will share the contact details of the Supply Chain Coordination Limited (SCCL) VAT manager who is happy to be approached with queries.

Action: PJ to share SSCL VAT manager's contact detail with the committee

3.13 Facilities management

Mike Barlow has looked at the TCoE guidance. The problem is where contracts include a basket of services which go beyond facilities management, for example, personnel services, IT and finance. This is akin to LPF. Where the services in the contract all fall under heading 21 then there is no problem but where the range of services goes beyond facilities management then there may be problems.

HMRC are looking at these on a case by case basis – it seems to be in one particular region and one particular supplier. It is not clear what the drivers for the decisions are as it seems an odd mix of services to include in a single contract.

Often, all of the services in the contract fall under a COS heading but if they don't all fall under the same heading then this is a problem. A single supply of services must all fall under the same COS heading. If the services were delivered separately under separate contracts, then there would not be a problem. But, in these cases, it is a single contract, single supply, single price but multiple service elements.

3.14 VAT update on amenity beds – HMRC update

This issue would be kept on the agenda until further information is provided. Mike Barlow has a call about the issue on Friday and HMRC do want to engage with the sector on this issue.

3.15 VAT on staff seconded between NHS bodies and local authorities

This is the result of a query sent in by an HFMA member which is relatively straightforward. Anthony drafted the response (in attachment 3) which has been sent to the person who raised the query. The guidance is clear on the issue although it will depend on how the contract was set up.

There was some discussion about whether this is another example of an arrangement where the VAT consequences are considered at a late stage because there is an imperative to resolve a particular issue. It was agreed that this is an area where VAT simplification as a result of the s41 review would be beneficial.

These arrangements for joint working are the direction of travel so the simplification will become even more important. Arrangements such as these are beyond a ‘traditional’ secondment as there is a joint post, so it is more than a charge and recharge arrangement. Currently, this is only an issue in Greater Manchester as they have the flexibility to work across sectors. However, other areas are moving this way and are trying to set up these types of arrangements through STPs/ ICSs. The legal ramifications and funding are a barrier to development so simplification of VAT should be helpful.

Actions from previous meeting

All the actions from the previous meetings had been covered in the discussion during this meeting except for:

Construction Industry Scheme briefing – Anthony has now responded directly to the 2 queries that he has had so there is no need for any further action.

5. VAT briefs

There were no VAT briefs to update the committee on.

6. HMRC Consultations

There are no consultations which are particularly relevant to the NHS:

- The s41 review has been mentioned and will be added to the agenda for the next meeting
- The expansion of the changes to off-payroll (IR35) to the private sector will not impact directly on the NHS other than to, perhaps, remove the ‘level playing field’ argument against its implementation in the public sector.

7. Brexit

Nothing to discuss at this stage

To note

8. Any other business

There was a discussion about whether the Milton Keynes tribunal decision in early April would have an impact. The tribunal’s decision has not yet been published. The appeal was around a COS heading 14 claim and was a preliminary heading around the right to assess and the right to appeal. HMRC will be corresponding with the sector to set out the implications of this case.

Action: HFMA to add this to the agenda and audit trail for the next meeting

9. Future meeting dates

All meetings will be held at 110 Rochester Row from 11am – 2pm:

- 26 September 2019
- 23 January 2020
- 21 May 2020

Action: HFMA to book room and send out invite for the January and May 2020 meetings

Actions

1	HFMA to add Jane Wharton to the membership of the committee	LP
3	HFMA to add the s41 review to the agenda and the audit trail	DP/LP
3.2	DO to circulate the guidance on agency staff once it is published	DO
3.3	GL and PJ to pull together a summary briefing on COS 33	GL/PJ
3.7	MB to keep the committee informed of updates on MTD implementation	MB
3.9	GL and MB to email the committee with an update on NHS adjusting for bad debt relief	GL/MB
3.12	PJ to share SSCL VAT manager's contact detail with the committee	PJ
8	HFMA to add the Milton Keynes tribunal decision to the agenda and audit trail for the next meeting	LP
9	HFMA to book room and send out invite for the January and May 2020 meetings	LP