

TAXREP 3/06

VAT: MEDICAL SERVICES

Memorandum submitted in January 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in September 2005 by HMRC

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INTRODUCTION

1. We welcome the opportunity to comment on the consultation document published on 16 September 2005 by HMRC at <http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=170194&NewsAreaID=2> and http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_PROD1_024639&propertyType=document.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

KEY POINT SUMMARY

3. Our key points are:
 - VAT exemption should apply as a default to medical services with standard rating applying to narrow, specified situations.
 - Employment medicals are normally preventative medical care and accordingly should be exempt.

COMMENTS

4. Much of the consultation seeks information on matters on which we as non-doctors are not in a position to comment. However we have comments on general principles, including a proposed solution, and on timing of implementation.

General principles

5. Since the consultation paper was issued by HMRC in September 2005 it has become clear that virtually all dispensing GP practices need to consider becoming VAT registered. The Primary Care Trusts announced just before Christmas that from 1 April 2006 the criteria for reimbursing the VAT element of drugs purchased will be changed from whether the GP is VAT registered (reimbursement applies to personally-administered and dispensed drugs if GP is non-VAT registered) to whether the drug is personally administered (reimbursement will apply to drugs personally administered by GP disregarding VAT registration status). Since virtually all dispensing GP practices will need to consider becoming VAT registered from 1 April 2006, any changes following the consultative paper proposals will have a much wider impact.
6. Given that completing VAT returns and partial exemption calculations are not easy tasks if there is uncertainty over what is exempt or standard rated, it is important that VAT rules on exempt supplies are simple and certain, as recommended in our Ten Tenets for a Better Tax System (see Annex B). Whilst the current rules for the medical profession are not without difficulties, we welcome the fact that HMRC have

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confirmed to us that the current guidance will apply until an announcement is made, so at least the position will not be complicated by change until that time.

7. We suggest that the simplest solution which complies with ECJ decisions would be for services provided by GPs and others in the medical profession to be treated as being medical care and therefore exempt supplies unless covered by narrow, specified exceptions in which case they would be standard-rated supplies.
8. In particular, a medical report or certificate for fitness to carry out a professional activity, or activities requiring a sound physical condition, which requires an examination of the patient protects the health of the patient and thus should be treated as an exempt supply. Thus the exemption would apply to the situations cited in para 5.1 of the consultation paper, namely:
 - certificates of fitness to drive for the elderly;
 - certificates of fitness to drive by those recovering from a medical condition;
 - certificates of fitness to fly for pregnant women;
 - certificates of fitness to fly for pilots; and
 - certificates of fitness to fly when returning home after an accident abroad.
9. Where the examination is more in the way of an assessment for non-medical purposes, then we cannot see that the medical care exemption is in point. Examples of situations that we would put forward as exceptions to the exemption and therefore standard rated are some of those described in Business Brief 29/03 dated 16 December 2003 as being 'examinations to enable a third party to decide a course of action', namely:
 - medicals to assess the level of insurance premiums;
 - medical reports in connection with personal injury litigation and professional medical negligence; and
 - medical reports to assess a person's entitlement to a war pension or similar benefit.
10. We have excluded pre-employment medicals from the above list of standard-rated supplies even though HMRC suggest in Business Brief 29/03 and para 3.4 of the consultation paper that employment medicals should always be taxable. We think that this is too broad. It assumes that the medical is required for other than care purposes. That is unlikely to be true in many cases. At one time, employment medicals were required mainly because firms had pension funds and the health of the employee was relevant to risk assessment. However, since the rule that employees have to join funds has disappeared, that is no longer the case. These days most employers that require a medical do so for one primary reason, namely health and safety of the employee, which is a preventative task. We therefore consider that it is not appropriate to have a blanket exclusion from exemption for employee medicals.

Implementation date

11. The VAT medical exemption and government GP funding together make for complexity. Once the VAT changes are decided upon, they will need to be promulgated by HMRC. The medical profession and advisers will need to assimilate

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the new rules and update their procedures and software developers will need to write updated programmes and send relevant upgrades to users. To enable this, HMRC will need to revise and publish guidance for traders and advisers and software developers.

- 12.* In view of this and the changes being introduced by the Department of Health, we suggest that to enable an orderly transition the implementation date of any VAT changes be delayed from 1 April 2006.
- 13.* We would also welcome the opportunity to comment further as the rules are developed and on draft guidance.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at tdtf@icaew.co.uk or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.