

VAT: A review of the scope of the VAT exemption for medical services

HM Revenue & Customs

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1 INTRODUCTION

Background

- 1.1 On 20 November 2003, the European Court of Justice (ECJ) issued its judgment in the case of Dr Peter d'Ambrumenil and Dispute Resolution Services (C-307/01). The decision affects the way in which the UK has viewed the VAT exemption for health, and the VAT treatment of some services will have to change as a result.
- 1.2 However, primary health care and treatment are not affected by the judgment or this consultation document, and VAT will not apply to them.

Objectives and scope of the consultation

- 1.3 The purpose of this consultation is to ensure that we have a full understanding of the implications that implementing this decision will have on the health sector and its clients, and to minimise the compliance burdens for those affected.
- 1.4 The aims of the consultation are to:
 - identify health professionals, services and clients affected by the judgment;
 - assess, where possible, the full impact of the judgment; and
 - explore the need for transitional provisions.
- 1.5 To inform the assessment of options, the Government is keen to hear from trade bodies and associations in the health sector as well as individual health professionals and clients, to seek their views, identify any concerns and gather information about their activities and the impact that the implementation of the judgment might have on them. This consultation paper is being sent to the organisations (listed at Annex A) that have been identified as having a particular interest in the subject, but contributions and views from all interested parties are also welcome.
- 1.6 A number of questions are set out in the main body of the document which are collated as a questionnaire in Annex B. In addition to answers to these questions the Government would be happy to receive other comments on the issues and alternative suggestions.

Responding to this consultation

- 1.6 Responses should be sent by 16 December 2005 to:

Rhiannon Cross
VAT: Consultation on the Exemption for medical services
HM Revenue & Customs,
CT & VAT Products and Processes Group
3E/08, 100 Parliament Street,
London, SW1A 2BQ.

Alternatively, you can e-mail responses to: rhiannon.cross@hmrc.gsi.gov.uk

If you have any questions regarding the consultation please telephone:

Jane Hyde on 0121 697 4010 or
Cathy Smith on 0207 147 0568

- 1.7 To help evaluate responses, it would be useful if respondents would explain their interest in the subject and also make clear if their response is being made on behalf of a group or representative body.
- 1.8 This consultation is conducted in accordance with the Government's *Code of practice on written consultations* www.cabinet-office.gov.uk.
- 1.9. Please note that –
 - Although all responses to this document will be considered carefully, they will not be acknowledged individually.
 - The information you send may need to be circulated within HM Revenue & Customs and, unless you clearly indicate to the contrary, may be made public or included in any summary of the responses received. If you do not wish your response to be made public or included in a summary of responses received, you should clearly state this in your reply and should provide a summary of your response, which, in accordance with the *Code of Practice of Access to Government Information* www.lcd.gov.uk should include a specific reason why the full response must remain confidential, for example if it contains sensitive commercial information.
 - If you are replying by e-mail, it will be assumed that your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to Revenue and Customs.

Additional copies of this consultation paper can be obtained from the address shown above, or from the HM Revenue & Customs web site www.hmrc.gov.uk

2 THE HEALTH EXEMPTION

- 2.1 Article 13A(1)(c) of the 6th VAT Directive exempts 'the provision of medical care in the exercise of the medical and paramedical professions as defined by the member state concerned'.
- 2.2 This has been implemented in UK law by Item 1 of Group 7, Schedule 9 to the VAT Act 1994 which exempts *the supply of services by a person registered or enrolled in any of the following...* The law then lists the various registers that it

applies to such as those for medical practitioners, ophthalmic opticians and other health professions such as arts therapists and dieticians (see Annex C).

- 2.3 It has historically been Revenue and Customs' view that where a medical professional provides services using his professional training and knowledge, these services should be exempt from VAT. However, following earlier challenges to this approach, the exemption was clarified and redefined in 1996, when Customs issued a Business Brief advising that services which were predominantly legal in nature were taxable. And later, in 2001, paternity testing became subject to VAT at the standard rate following an ECJ ruling against Austria.

3 THE JUDGMENT OF THE EUROPEAN COURT OF JUSTICE

- 3.1 In the case of Dr Peter d'Ambrumenil and Dispute Resolution Services, the ECJ was asked to consider the scope of the exemption for medical services. The services concerned involved the examination and/or testing of individuals and the preparation of medical reports. These were predominantly carried out for insurance companies and employers or for legal proceedings in, for example, personal liability cases.

- 3.2 In essence, the judgment defines *medical care* for the purpose of the exemption. While medical care may have a therapeutic nature, the Court ruled that it is not restricted to such care. Examinations or other medical interventions that are of a preventative nature for persons not suffering from any disease or health disorder should also be included.

- 3.3 The court found that exemption would apply to services such as:

- conducting medical examinations of individuals for employers or insurance companies;
- the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers; or
- certification of medical fitness, for example, as to fitness to travel,

provided that those services are intended **principally to protect (including maintain or restore) the health of the person concerned**. Therefore, where they are not intended principally to protect the health of the person concerned, they are taxable.

- 3.4 Specific services supplied by health professionals and identified by the court as not intended principally to protect the health of the person concerned, and which should therefore be taxable were:

- giving certificates as to a person's medical condition for purposes such as entitlement to a war pension or incapacity benefit;
- medical examinations conducted with the aim of preparing an expert medical report regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation

- the preparation of medical reports following examinations referred to in the previous bullet point and medical reports based on medical notes without conducting a medical examination;
- medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation;
- the preparation of medical reports following examinations referred to in the previous bullet point and medical reports based on medical notes without conducting a medical examination;
- pre-employment medicals.

The ECJ found therefore that it is the *purpose* of the medical service that determines the VAT treatment of the services supplied by health professionals.

4 SERVICES THAT REMAIN FREE FROM VAT

4.1 All primary health care is unaffected by the ECJ judgment and remains free from VAT. This includes:

- NHS services by doctors and other health professionals under the General Medical Services contract introduced on 1 April 2004;
- Primary medical care provided in hospitals and similar institutions (both NHS and private);
- Eye sight and hearing tests; and
- Dental services.

5 OTHER SERVICES

5.1 However, the position is not so clear in other cases. For example, the court considered the issue of certificates for fitness to carry out a professional activity, or activities requiring a sound physical condition, which could include:

- 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
- Certificates of fitness to fly when returning home after an accident abroad

5.2 The court considered that such certificates would not qualify for exemption when they were required as a condition of allowing the person to exercise the particular activity, as the principal purpose of the service provided by the doctor is to provide the third party with the necessary information for taking a decision.

5.3 However, where the purpose of the certificate is to make clear to a third party that a person's state of health imposes limitations on certain activities or requires that they are carried out under certain conditions, then the court considered that the purpose of the certificate could be seen as protecting the health of the individual, and in such cases, exemption could apply.

5.4 Hence, the liability of the supply is dependent on the principal purpose of the service provided and whether there is an element of medical care.

Question 1. If a patient requests and pays for a report or certificate, are you generally aware of the precise reason/s for the request?

Question 2. When providing certificates of fitness (of whatever nature), in what percentage of cases are limitations or certain conditions imposed on the activity concerned?

Question 3. Where no limitations or conditions are imposed, are these mainly confined to particular types of certificate – for example, certificates of fitness to drive for the elderly or for pilots to fly? If so, please detail which types of certificate are concerned.

6 INSURANCE SERVICES

6.1 It is our understanding that insurance companies commission medicals only for the purpose of setting premium levels or settling claims, both of which, the court has explicitly ruled to be taxable. However, we are uncertain as to whether insurance companies would commission medicals at any other time during the life of a policy and if so, for what purpose.

Question 4. Do insurance companies commission medicals for any reason other than for the purpose of setting premiums and settling claims, and if so, for what purpose?

7 REHABILITATION SERVICES

7.1 Rehabilitation services are provided by health professionals such as occupational therapists and physiotherapists, amongst others. They intervene at an early stage of the rehabilitation process to speed up recovery as well as providing reports to insurers who will decide the level of compensation payable. It is our belief that the primary purpose of rehabilitation services is ‘medical care’, and that the reports are incidental. Therefore, unless the reports are made as part of a separate supply, the whole service is exempt.

Question 5. Are there any occasions when you would consider that the primary purpose of the rehabilitation services provided is not that of medical care? If so, please state when and why.

8 OCCUPATIONAL HEALTH

8.1 As stated above pre-employment medicals will become taxable. Occupational health professionals, however, provide a wide range of services to employers, such as:

- on-site nursing services;
- general health and safety advice;
- advice on ergonomic layouts; and
- Health & Safety related risk assessments

- 8.2 Under the ECJ judgment the nursing services will remain exempt but it is possible that more general advice provided by a registered health professional could also be exempt from VAT where it is aimed at protecting the health of a body of people working in an office and relates directly to health matters.

Question 6. We are interested in views on whether more general advice and/or risk assessments contain a sufficient element of preventative care to be regarded as principally for the purpose of protecting, maintaining or restoring the health of individuals.

9 QUANTITATIVE INFORMATION

Question 7. How many hours a week do you or your practice (if in a practice basis, please state how many GPs) typically spend working on medical reports, certificates and blood testing for the purposes of insurance or benefit assessments, or legal proceedings?

Question 8. How much income do you or your practice (if on a practice basis, please state how many GPs) typically get at the moment from working on medical reports, certificates, blood testing as above? (Please state whether any figures given are weekly, annual etc).

Question 9. What other supplies do you make which do not involve “direct” medical/palliative care of your patients – for example, do you conduct paternity tests, forensic-type tests, do you offer expert medical opinion in court or for court cases?

Question 10. What is your income from the supplies noted in response to question 9? (Please state whether any figures given are weekly, annual etc, and if on a practice basis, how many GPs are included in the answer given).

10 REGISTRATION FOR VAT

10.1 VAT only becomes chargeable if a health professional registers for VAT either compulsorily because his taxable turnover has reached £60,000 or voluntarily when he chooses to do so, regardless of taxable turnover. In considering whether registration will be required as a result of the ECJ ruling, account must be taken of all 'taxable' income, including that relating to taxable supplies which you already make but which do not, in themselves, currently place you over the VAT registration threshold.

8.2. We are aware that doctors in particular treat their private work for insurers and others in different ways for accounting purposes. Some doctors account for this work as individuals and in such cases the doctor will have to undertake a significant amount of work before they have to register for VAT. However some GP practices set up a separate limited company to account for the private work of all the GPs in the practice and in such cases they will reach the VAT registration threshold much sooner.

8.3. It has been difficult to assess how many additional GPs may be required to register for VAT and it would be helpful to know how this work is currently organised.

Question 11. Do individual GPs predominantly account for private work on an individual or practice basis?

Question 12. If they account for it on a practice basis will GPs change how they account for private work as a result of the judgment?

Question 13. As a result of the judgment will GPs reduce the amount of the private work they do so that they do not have to register for VAT?

Question 14. If possible, please estimate the typical existing level of annual taxable turnover for GPs. (Please state whether this is at the individual GP or whole practice level; if at the practice level, please state how many GPs are included within any figures given. We appreciate that this is a very hard question to answer, but would be grateful for any estimates or indications it might be possible to provide).

Question 15. As a registered health professional, would you consider applying for voluntary VAT registration because you undertake work which will become taxable as a result of this ECJ decision?

Question 16. At present we have been using the working assumption that consultants are generally already registered for VAT. Is this the case? If so, is this because taxable turnover is generally above the current VAT registration threshold of £60,000 per annum, or is it generally a voluntary registration?

11 REGULATORY IMPACT

11.1 As well as the VAT implications for the changes, we need to consider the regulatory impact e.g. any additional administrative costs arising from the need to make changes to accounting systems. We are aware that some health

professionals may have to register for VAT for the first time, however, we are uncertain as to whether accounting systems are already in place which may accommodate VAT and/or the liability changes readily.

Question 17. Will you incur significant administrative costs (one-off or continuing) as a direct consequence of the proposed changes and/or having to register for VAT for the first time? If so, please explain and provide an estimate of the additional cost likely to be incurred.

Question 18. Do you have any further comments on the partial RIA?

12 IMPLEMENTATION DATE

12.1 We would wish to allow sufficient time for health professionals to adjust for the change in the VAT treatment of medical services. In particular because the new GMS contract only came into use this year significant changes have been made to GPs' working practices and funding. The end of the first financial year for the contract is 31 March 2005.

Question 19. What would be the impact of implementing any VAT change from 1 April 2006?

Question 20. When would be the optimum date for such a change during the financial year?

13 TRANSITIONAL PROVISIONS

13.1 We understand that because there is a delay in dealing with compensation claims some medical reporting companies have long running contracts. Transitional provisions could relieve the impact of the change for them and also others in a similar position. However, to determine whether such provisions are necessary and to design appropriate measures if required, we need to have details of the types of contract that exist and when invoices are issued and payments received. We would be grateful if businesses affected by contractual delays could also identify the difficulties they face.

Question 21. What is the number and value of long running contracts (i.e. greater than 3 months) as at the current date (or latest figures available)?

Question 22. What type of transitional provisions would be beneficial for ongoing contractual arrangements and how do these relate to the difficulties faced?

Finally, please advise of any other issues the implementation of this decision will have for you which have not been specifically addressed in any of the previous questions.

Annexes

14 ANNEX A - BODIES CONSULTED

Association of British Insurers
Association of Chief Police Officers (ACPO)
Association of Forensic Physicians
Association of Medical Reporting Organisations
British Medical Association
Criminal Injuries Compensation Authority
Department of Health
Department of Work and Pensions
Home Office
NHS Plus
Occupational Therapists in Independent Practice
UK Register of Expert Witnesses

15 ANNEX B - LIST OF QUESTIONS

To help evaluate responses, please advise of your interest in the subject and if your response is being made on behalf of a group or representative body.

Question 1. If a patient requests and pays for a report or certificate, are you generally aware of the precise reason/s for the request?

Question 2. When providing certificates of fitness (of whatever nature), in what percentage of cases are limitations or certain conditions imposed on the activity concerned?

Question 3. Where no limitations or conditions are imposed, are these mainly confined to particular types of certificate – for example, certificates of fitness to drive for the elderly or for pilots to fly? If so, please detail which types of certificate are concerned.

Question 4. Do insurance companies commission medicals for any reason other than for the purpose of setting premiums and settling claims, and if so, for what purpose?

Question 5. Are there any occasions when you would consider that the primary purpose of the rehabilitation services provided is not that of medical care? If so, please state when and why.

Question 6. We are interested in views on whether more general advice and/or risk assessments contain a sufficient element of preventative care to be regarded as principally for the purpose of protecting, maintaining or restoring the health of individuals.

Question 7. How many hours a week do you or your practice (if in a practice basis, please state how many GPs) typically spend working on medical reports, certificates and blood testing for the purposes of insurance or benefit assessments, or legal proceedings?

Question 8. How much income do you or your practice (if on a practice basis, please state how many GPs) typically get at the moment from working on medical reports, certificates, blood testing as above? (Please state whether any figures given are weekly, annual etc).

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Question 13. As a result of the judgment will GPs reduce the amount of the private work they do so that they do not have to register for VAT?

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Question 17. Will you incur significant administrative costs (one-off or continuing) as a direct consequence of the proposed changes and/or having to register for VAT for the first time? If so, please explain and provide an estimate of the additional cost likely to be incurred.

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Question 20. When would be the optimum date for such a change during the financial year?

Question 21. What is the number and value of long running contracts (i.e. greater than 3 months) as at the current date (or latest figures available)?

Question 22. What type of transitional provisions would be beneficial for ongoing contractual arrangements and how do these relate to the difficulties faced?

Finally, please advise of any other issues the implementation of this decision will have for you which have not been specifically addressed in any of the previous questions.

16 ANNEX C - LEGAL REFERENCES

European Law

Article 13A(1) provides:

1. *Without prejudice to other community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:*

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnoses and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

UK Law

Item 1 of Group 7 of Schedule 9 to the VAT Act 1994 exempts:

The supply of services by a person registered or enrolled in any of the following –

- (a) the register of medical practitioners or the register of medical practitioners with limited registration;*
- (b) either of the registers of ophthalmic opticians or the register of dispensing opticians kept under the Opticians Act 1989 or either of the lists kept under section 9 of that Act of bodies corporate carrying on business as ophthalmic opticians or as dispensing opticians;*
- (c) the register kept under the Health Professions Order 2001;*
- (ca) the register of osteopaths maintained in accordance with the provisions of the Osteopaths Act 1993;*
- (cb) the register of chiropractors maintained in accordance with the provisions of the Chiropractors Act 1994;*
- (d) the register of qualified nurses and midwives maintained under article 5 of the Nursing and Midwifery Order 2001;*
- (e) the register of dispensers of hearing aids or the register of persons employing such dispensers maintained under section 2 of the Hearing Aid Council Act 1968*

Health Professions Order 2001

Professions which have registers kept under the Health Professions Order 2001 are:

- *arts therapists;*
- *podiatrists and chiropodists (Chiropody: the examination, diagnosis, treatment and prevention of diseases and malfunctions of the foot and its related structures);*
- *clinical scientists;*

- *dieticians (Dietetics: the application of nutritional science to the maintenance or restoration of health);*
- *biomedical scientists;*
- *occupational therapists (Occupational therapy: treatment aimed at enabling people disabled by physical illness or a serious accident to relearn muscular control and co-ordination, to cope with everyday tasks, such as dressing, and when possible to resume employment);*
- *orthoptists (Orthoptics: a technique used to measure and evaluate squint, mainly in children. It includes assessment of monocular and binocular vision, eye exercises and measures to combat lazy eye);*
- *paramedics;*
- *physiotherapists (Physiotherapy: treatment of disorders or injuries with physical methods or agents);*
- *prosthetists and orthoptists;*
- *radiographers (Radiography: the use of radiation to obtain images of parts of the body. Radiotherapists are included in this register);*
- *speech and language therapists; and*
- *operating department practitioners.*